JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
455 Golden Gate Avenue
San Francisco, California 94102-3688

Report Summary

TO: Members of the Judicial Council

FROM: Michael Bergeisen, General Counsel
Melissa Johnson, Assistant General Counsel
Heather Anderson, Senior Attorney, 415-865-7691

DATE: December 3, 2002

SUBJECT: Ethics Standards for Neutral Arbitrators in Contractual Arbitration (amend Cal. Rules of Court, division VI of the appendix) (Action Required)

Issue Statement

Code of Civil Procedure section 1281.85, which was enacted in late September 2001 as part of Senate Bill 475—cosponsored by the Judicial Council, the Governor, and Senator Martha Escutia, the chair of the Senate Judiciary Committee—required the Judicial Council to adopt ethics standards, effective July 1, 2002, for all neutral arbitrators serving in arbitrations pursuant to an arbitration agreement. When the Judicial Council adopted the standards in April 2002, the council directed staff to recirculate the adopted standards for public comment. The standards were out for public comment from May to September 2002. During this same period, the Legislature adopted several bills concerning contractual arbitration. Staff prepared proposed amendments and sent them to members of the Blue Ribbon Panel of Experts on Arbitrator Ethics for their review.

Staff recommends the attached amendments in response to the public comments received, the recently enacted legislation, and the input of the Blue Ribbon Panel members. The text of the recommended amendments begins at page 68.[1]

[1] Please note that we have attached two copies of the recommended amendments—a copy showing the recommended changes using strikeouts and underlining, beginning on page 68, and a "clean" copy showing the standards with these changes incorporated, beginning on page 106.

Recommendation
Staff recommends that the Judicial Council:

1. Amend the ethics standards for neutral arbitrators in contractual arbitration contained in division VI of the appendix to the California Rules of Court, effective January 1, 2003, as set forth in the attachment to this report, to respond to public comment on the standards and recently enacted legislation;

2. Direct staff to transmit all of the public comments that raise concerns about statutory requirements or statutory language to the appropriate members of the Legislature; and

3. Direct staff to solicit comments on these standards after January 1, 2004, and report to the council on any recommended amendments to the standards.

Rationale for Recommendation
In response to public comments and input from the members of the Blue Ribbon Panel, staff recommends a number of changes to the standards to improve their clarity and minimize the burdens associated with compliance while maintaining appropriate ethical obligations, including:

- Adding a new provision to standard 1 to clarify that the standards are not intended either to affect any existing cause of action or to create any new cause of action;

- Adding the phrase "who are subject to these standards" to modify "arbitrator" in standard 1 and in the definition of "arbitrator" in standard 2(a), to clarify that references to "arbitrators" in the standards mean only those arbitrators covered by these standards;

- Deleting unilaterally appointed arbitrators from the definition of "neutral arbitrator" in standard 2(a) so that such arbitrators are not inappropriately subject to disqualification by the opposing party;

- Amending the definition of "conclusion of the arbitration" in standard 2(c) to encompass situations in which the arbitration ends because of settlement or dismissal;

- Amending the definition of "dispute resolution provider organization" in standard 2(g) to encompass only nongovernmental entities since governmental entities do not play the arbitration administration role or have the types of relationships with parties or attorneys that this standard's references to provider organizations are designed to address;

- Amending the definitions of "lawyer in the arbitration" and "lawyer for a party" in standards 2(k) and (l) [relettered (l) and (m) in the proposed revision] to (1) eliminate contrasting language that may have unintentionally suggested that "lawyer for a party" included lawyers representing parties for purposes other than the arbitration and (2) more closely track the language used in the statutory definition of "lawyer for a party";

- Adding a new definition for the term "private practice of law" in proposed new standard 2(r), which is used in some of the disclosure provisions that originate from Code of Civil Procedure section 170.1;

- Adding a sentence to standard 2's comment, highlighting that there are two definitions for lawyers representing parties in the arbitration;

- Breaking the current standard 7 into three separate standards—one focused on disclosures required in all arbitrations (standard 7), one focused on the additional disclosures required in consumer arbitrations administered by a provider organization (standard 8), and one focused on arbitrators' duty to inform themselves about matters that must be disclosed (standard 9). The shorter standards should be easier to read and understand. In addition, gathering together in a new standard 9 all of the provisions concerning arbitrators' duty of inquiry should make that obligation clearer;

- Narrowing the family members covered by 7(b)(2) [renumbered 7(d)(2) in the proposed revision] to only those specified in Code of Civil Procedure section 170. The current standard uses "extended family" here in order to simplify the language, but this creates additional burdens for arbitrators;

- Deleting the special definition of "lawyer in the arbitration" that appears in current standard 7(b)(2)(A) and instead incorporating the substance of this provision into proposed new standard 7(d)(7)(C). We believe this will improve clarity and that the new arrangement also more closely tracks Code of Civil Procedure section 170.1, upon which this provision is based;

- Replacing cross-references in 7(b)(4), 7(f), and 8 [renumbered 7(d)(4), 7(c), and 10 in the proposed revision] to Code of Civil Procedure section 1281.9 with the relevant statutory language, so that readers do not have to look up the statutory provisions to understand the standard;

- Adding "non–collective bargaining" before references to "cases" and "arbitrations" in 7(b)(4), (5), and (12)(A)(v) [renumbered 7(d)(4) and (5) and

(8)(b)(1)(D) in the proposed revision] to make clear, as provided in Code of Civil Procedure 1281.9, that these cases and arbitrations do not need to be disclosed;

- Modifying the provisions in 7(b)(4), (5), and (12) [renumbered 7(d)(4) and (5) and 8(b)(1)(1)(D) in the proposed revision] that describe the information that must be disclosed about prior cases, so that all three provisions use the same basic structure. A consistent structure should make these provisions easier to understand;

- Narrowing the disclosures concerning dispute resolution services other than arbitration that must be made under 7(b)(5) [renumbered 7(d)(5) in the recommended revision] to cases in which the arbitrator received or expects to receive compensation for these services. This change will reduce disclosure burdens for arbitrators, clarify the standard, and make the standard's requirements more consistent with the standards for judicial arbitrators;

- Eliminating former 7(b)(6)(B) as it unnecessarily repeats relationships covered under 7(b)(6) [renumbered 7(d)(7) in the proposed revision], creating confusion;

- Clarifying that 7(b)(12) [renumbered as new standard 8 in the proposed revision] applies only to cases in which an arbitrator provider organization is administering the arbitration, and that required disclosures relate only to that administering provider organization's relationships with the parties, attorney, and arbitrator;

- Moving former 7(b)(12)(C) and (D) to the beginning of new standard 8 so that the specific requirements relating to disclosure of other cases involving the parties or attorneys in the arbitration are grouped together;

- Moving former 7(d) and (f), which contain provisions generally applicable to all of the disclosure obligations in standard 7, to the beginning of standard 7. Several comments we received observed that readers missed these provisions when they were placed at the end of standard 7, creating some confusion about their application;

- Broadening 7(d)(1) [renumbered 9(b) in the proposed revision] to include other matters relating to an arbitrator's extended family, to clarify that this "safe harbor" provision also covers extended family members' knowledge of facts disputed in the arbitration;

- Deleting the references in 7(e) [renumbered 7(f) in the proposed revision] to an arbitrator's continuing duty to inform himself or herself of matters to be disclosed. This should reduce the burden of inquiry on arbitrators while maintaining their obligation to disclose any matters about which they subsequently become aware;

- Adding new 9(c) to address the difficulty arbitrators face in obtaining information about the associates of the lawyers who are representing the parties in the arbitration. Similar in concept to former 7(b)(1) [renumbered 9(b) in the recommended revision], this provision would clarify what arbitrators must do to fulfill their duty of inquiry about relationships with such associates;

- Modifying standard 10(b) to make clear that arbitrators are required to make a disclosure only if they will entertain offers of employment while the arbitration is pending; and

- Eliminating the requirement in former 10(d) that, in consumer arbitrations, arbitrators obtain the consent of the parties in a pending arbitration before taking any new employment from a party in that arbitration. Arbitrators in all arbitrations would still be obligated under 10(b) to disclose if they will entertain offers of employment from the parties while the arbitration is pending and would still be subject to disqualification based upon this disclosure.

In addition, staff recommends two changes to the standards to reflect recently enacted legislation:

- Adding new standard 7(d)(6) in response to the enactment of Assembly Bill 2504, which specifically requires arbitrators to disclose whether they have a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or are participating in, or within the last two years have participated in, discussions regarding such prospective employment or service with a party to the proceeding; and

- In response to the enactment of Assembly Bill 2574, deleting arbitrators' obligation under standard 7(b)(12) to disclose in consumer arbitrations whether a dispute resolution provider organization administering the arbitration has a financial interest in a party or attorney in the arbitration or whether a party or attorney has a financial interest in that provider organization. Assembly Bill

2574 prohibits a provider organization from administering a consumer arbitration if the provider organization has, or within the preceding year has had, a financial interest in any party or attorney for a party. The bill also prohibits a provider organization from administering a consumer arbitration or providing any other services related to a consumer arbitration if any party or attorney for a party has, or within the preceding year has had, any type of financial interest in the provider organization. Staff does not believe it is appropriate to ask arbitrators to disclose the existence of interests that are prohibited by statute.

Alternative Actions Considered

Staff considered whether standard 7(b)(12)—which requires arbitrators in consumer arbitrations administered by a dispute resolution provider organization to disclose information about business or financial relationships between the administering provider organization and the parties or attorneys in the arbitration—should be deleted or further amended in light of the recent legislation concerning provider organizations. Staff reviewed all of the arbitration provider–related bills enacted during this last legislative session. Because these bills neither prohibit nor require direct disclosure by provider organizations of most of the relationships and affiliations that must be disclosed under standard 7(b)(12), staff does not believe that these bills warrant the elimination or further amendment of this standard.

Comments From Interested Parties

The standards adopted by the council were circulated for public comment between May 16 and September 6, 2002.

We received comments from 41 organizations and individuals. Commentators were not asked to submit a response form indicating whether they agreed or disagreed with the standards. However, the majority of the respondents raised concerns about one or more aspects of the standards.

The staff considered all of the comments and made recommendations for revisions to the proposed standards. Both the comments and staff's proposed revisions were sent to the members of the Blue Ribbon Panel of Experts on Arbitrator Ethics, and staff made further revisions to the standards in light of comments from panel members.

Summaries of the comments received and staff's responses to them are set forth by standard and subdivision in the table that begins on page 141.

Implementation Requirements and Costs

Implementation of these standards, particularly the disclosure requirements, will create new administrative burdens and is likely to impose new costs on both

individual arbitrators and on dispute resolution provider organizations. It is also likely to result in increased requests to disqualify arbitrators, to appoint arbitrators, and to vacate arbitration awards, which would mean an increase in workload for the trial courts.

There is also likely to be ongoing work for Administrative Office of the Courts (AOC) staff to prepare educational materials and make presentations concerning these standards, as well as prepare for the proposed review of the standards.

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DATE: December 3, 2002

SUBJECT: Ethics Standards for Neutral Arbitrators in Contractual Arbitration (amend Cal. Rules of Court, division VI of the appendix) (Action Required)

Issue Statement

Administrative Office of the Courts staff is proposing the attached amendments to the ethics standards for neutral arbitrators in contractual arbitration. When the Judicial Council adopted the standards in April 2002, the council directed staff to recirculate the adopted standards for public comment. The standards were out for public comment from May to September 2002. During this same period, the Legislature adopted several bills concerning contractual arbitration.

Staff prepared proposed amendments and sent them to members of the Blue Ribbon Panel of Experts on Arbitrator Ethics for their review. The attached amendments are being proposed by staff in response to the public comments received, the recently enacted legislation, and the input of the Blue Ribbon Panel members. The text of the proposed amendments begins at page 68.[2]

Background

Senate Bill 475 (Escutia) and the Judicial Council's charge

Last year, the Judicial Council cosponsored a bill with the Governor and Senator Martha Escutia, the chair of the Senate Judiciary Committee, to address concerns about the increased use of private dispute resolution processes, including concerns

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about the fairness of these processes and whether they favor certain litigants over others.[3] The author specifically raised concerns about the significant number of cases that end up before an arbitrator pursuant to contractual obligations.[4] Of particular concern was the fact that arbitrators in private contractual arbitrations, while subject to fairly detailed statutory disclosure requirements, were not subject to any comprehensive set of mandatory ethics standards like the Code of Judicial Ethics provisions that apply to arbitrators in the judicial arbitration program.[5]

This cosponsored bill, Senate Bill 475 (Escutia), was enacted in late September 2001. Code of Civil Procedure Section 1281.85,[6] part of that legislation, required the Judicial Council to adopt ethics standards for all neutral arbitrators in contractual arbitration effective July 1, 2002. This section specifies that the standards adopted by the Judicial Council have mandatory application to contractual arbitrators:

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[3]See Sen. Rules Com., Off. of Sen. Floor Analysis, Analysis of Sen. Bill No. 475 (2001–2002 Reg. Sess.), as amended August 27, 2001, p. 3, which states: "According to the author, this bill springs from a concern mutually shared by Governor Davis, Chief Justice George, and the author that the Legislature must take a serious look at the growing use of private judges to assess the fairness and the possible creation of a dual justice system that favors the wealthy litigant over the poor litigant. The author states that this bill is intended to address just some of the myriad concerns arising through the increased use of private dispute resolution including the creation of a dual justice system. This bill seeks to address fairness concerns by requiring private arbitrators to comply with ethical guidelines to be established by JC."

[4] "In theory, the publicly financed court system is supposed to provide all civil disputants, rich or poor, with an impartial forum within which to litigate and resolve their differences. In reality, however, a fair number of cases end up before a private judge or arbitrator pursuant to contractual agreements." *Ibid*. See also Assem. Com. on Judiciary, Analysis of Sen. Bill No. 475 (2001–2002 Reg. Sess.), as amended August 20, 2001, p. 4, which states: "[T]he growing use of private arbitrators—including the imposition of mandatory, pre-dispute binding arbitration contracts in consumer and employment disputes—has given rise to a largely unregulated private justice industry."

[5] "While lawyers who act as arbitrators under the judicial arbitration program are required to comply with the Judicial Code of Ethics, arbitrators who act under private contractual arrangements are, surprising to many, currently not required to do so. . . . Because these obligations do not attach to private arbitrators, parties in private arbitrations are not assured of the same ethical standards as they are entitled to in the judicial system." *Ibid*. See also Sen. Com. on Judiciary, Analysis of Sen. Bill No. 475 (2001–2002 Reg. Sess.), as amended April 16, 2001, p. 4, which states: "However, any person, whether a retired judge, active or inactive lawyer, or layperson, when deciding a private arbitration matter is not required to comply with the Judicial Code of Ethics. This shortcoming is a problem, asserts the author, because parties to private arbitrations deserve the same fairness, integrity and impartiality from their private judges as they would receive from a public judge in a public case."

[6] Added by Stats. 2001, ch. 362 (SB 475), § 4. All citations are to the Code of Civil Procedure unless otherwise noted.

> Beginning July 1, 2002, a person serving as a neutral arbitrator pursuant to an arbitration agreement shall comply with the ethics standards for arbitrators adopted by the Judicial Council pursuant to this section.

Section 1281.85 also provides the Judicial Council with parameters for the scope and content of the ethics standards:

> These standards shall be consistent with the standards established for arbitrators in the judicial arbitration program[7] and may expand but may not limit the disclosure and disqualification requirements established by this chapter.[8] The standards shall address the disclosure of interests, relationships, or affiliations that may constitute conflicts of interest, including prior service as an arbitrator or other dispute resolution neutral entity, disqualifications, acceptance of gifts, and establishment of future professional relationships.

Development and adoption of the standards

Following the enactment of section 1281.85 in late September 2001, Chief Justice Ronald M. George appointed a 19-member Blue Ribbon Panel of Experts on Arbitrator Ethics to assist in the development of a set of ethics standards for neutral arbitrators in contractual arbitration. The panel, chaired by Professor Jay Folberg of the University of San Francisco School of Law, included law school faculty; sitting and retired judges; legislative and executive branch representatives; business, consumer, and labor representatives; and practicing arbitrators (a roster of the panel of experts is attached at page 67). The panel provided staff with input on the drafting of the arbitrator ethics standards. Its members reviewed and commented on four preliminary drafts of the proposed standards before the standards were presented to the Judicial Council.

A draft of the standards was circulated for public comment last winter, between January 23 and February 22, 2002. During that comment period, two public forums on the proposed standards were also held, one in Los Angeles and one in San Francisco. Forty-one people attended the public forums. Written comments on the circulated proposal were received from 62 organizations or individuals.

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[7] The judicial arbitration program is governed by Code Civ. Proc., §§ 1141.10–1141.31, and by Cal. Rules of Court, rules 1600–1618. Arbitrators in the judicial arbitration program are also subject to the provisions of Cal. Code Jud. Ethics, canon 6D.

[8] That is, ch. 2, Enforcement of Arbitration Agreements, Code Civ. Proc., §§ 1281–1281.95. Disclosure and disqualification requirements in this chapter are set out in §§ 1281.9, 1281.91, and 1281.95.

At its April 2002 meeting, the council adopted the ethics standards for neutral arbitrators in contractual arbitration as division VI of the appendix to the California Rules of Court. However, in response to concerns about the short time frame that had been available both for the drafting of the standards and for the public comment on the standards, the council directed staff to immediately recirculate the standards adopted by the council for additional public comment.

Comments From Interested Parties

The standards adopted by the council were circulated for public comment between May 16 and September 6, 2002. In addition to the usual recipients, the invitation to comment was sent to all of the persons and organizations who had commented on a draft of the standards circulated for comment in February and to all the ADR professional organizations, arbitration provider organizations, and other interested persons or entities that staff and the panel were able to identify.

We received 41 responses to the invitation to comment. Commentators were not asked to submit a form indicating whether they agreed or disagreed with the standards. However, most of the respondents raised concerns about one or more aspect of the standards.

The staff considered all of the comments and made recommendations for revisions to the proposed standards. Both the comments and staff's recommended revisions were reviewed by members of the panel of experts, and staff further revised the draft standards based on panel members' suggestions.

Summaries of the comments received and staff's responses to these comments are set forth by standard and subdivision in the table that begins on page 141.[9]

Recently Enacted Legislation Concerning Contractual Arbitration

This fall, the Legislature enacted several bills that affect contractual arbitration. The bills, copies of which are attached, include:

- Assembly Bill 2504, which amends Code of Civil Procedure sections 170.1 and 1281.9. Under these amendments, arbitrators are required to disclose whether they have any current arrangement with a party concerning prospective employment or other compensated service as a dispute resolution neutral or are participating in, or within the last two years have participated in, discussions regarding such prospective employment or service with a party;

[9] Because of the length of the comments received, the full texts of individual comments are not included in the comment chart. However, copies of all comments will be provided to council members upon request.

- Assembly Bill 2574, which prohibits a dispute resolution provider organization from administering a consumer arbitration if either (1) the provider organization has a financial interest in any party or attorney for a party in the arbitration or (2) the party or attorney for a party has a financial interest in the provider organization; and

- Assembly Bill 2656, which requires that provider organizations make available to the public a computer-searchable database on the IOnternet that contains specified information about the consumer cases in which the organization has provided dispute resolution services in the last five years.

In addition to these bills, the Legislature approved Assembly Bill 3029, which, among other things, included definitions of several terms that also appear in the council's ethics standards and would have required dispute resolution provider organizations to make certain disclosures to the parties in arbitrations they were administering. However, this bill was vetoed by the Governor.

Summary of Comments, Legislation, and Proposed Amendments to the Standards

Below is a summary of the general comments that were received on the standards and the amendments that are being proposed in response to those comments. Following that is a summary of the specific comments received on each standard, as well as the any relevant new statutory provisions, and the amendments that are being proposed in response to those comments and statutory amendments. The text of the proposed amendments to the standards begins on page 68.[10] Please note that the comment sections accompanying the standards will be published with them.

General comments on the standards

A number of commentators expressed concerns about the standards generally, without pointing to any standard in particular. These concerns are summarized below, by topic area.

In analyzing these broad comments and considering what changes to make in response, staff think it is important to note that some of these comments raise concerns about statutory language or requirements that the council may not be able to address by amending the standards. For example, while an arbitrator's violation of these ethics standards may, under some circumstances, fall within one of the grounds for vacating an arbitrator's award, those grounds for vacatur are

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established by statute,[11] not these standards. If a commentator's concern is not with an particular obligation imposed by the standards, but that the grounds for vacatur are too broad, the council will not be able to address that concern though any amendment to the standards. Similarly, if a commentator's concern is that a statutory obligation repeated in the standards is unclear or overly burdensome, the council will not be able to address that concern though amendment of the standards. While the council does not have the authority to alter statutory requirements, and this is not the right audience for concerns about these statutory requirements, these commentators have raised important concerns that should not be ignored or lost. Staff believes that the correct audience for concerns about statutory provisions is the Legislature. Staff therefore recommends that all of the comments that raise concerns about statutory requirements or language be consolidated and transmitted to the appropriate members of the Legislature.

Using the standards to indirectly address perceived problems with arbitration
Some commentators, including panel members Mr. Kagel and Mr. Roster, expressed concern about the standards being used as an indirect method of addressing concerns about the use or abuse of the arbitration process, such as concerns about consumer parties being forced to accept arbitration provisions in contracts of adhesion. These commentators suggested that concerns about the use of arbitration should be addressed directly by the Legislature, not through these standards.

Staff agrees that the standards should focus on establishing appropriate ethics guidelines for arbitrators, not on indirectly addressing concerns about the use of the arbitration process or agreements to arbitrate. As stated in standard 1, the purpose and intent of the standards are to "guide the conduct of arbitrators, to inform and protect participants in arbitration, and to promote public confidence in the arbitration process." Thus, the standards should not attempt to prevent arbitration in particular circumstances or interfere with parties' agreements to arbitrate.

However, staff also believes that it is appropriate to consider whether different arbitrator conduct is warranted under different arbitration circumstances. What is deemed necessary to "inform and protect participants in arbitration" and to "promote public confidence in the arbitration process" may legitimately vary

[11] The grounds for vacating a contractual arbitration award are specified in Code Civ. Proc., § 1286.2, and include that: "(3) The rights of the party were substantially prejudiced by misconduct of a neutral arbitrator" and "(6) An arbitrator making the award either: (A) failed to disclose within the time required for disclosure a ground for disqualification of which the arbitrator was then aware; or (B) was subject to disqualification upon grounds specified in Section 1281.91 but failed upon receipt of timely demand to disqualify himself or herself as required by that provision."

depending on the circumstances of the arbitration, including participants' pre-existing access to information about the arbitration process and their degree of control over that process.

The legislative history of the bill requiring the adoption of the ethics standards shows that the Legislature was particularly concerned about fairness in the context of arbitrations taking place as the result of contracts of adhesion. In such arbitrations, there is likely to be a great disparity between the parties in terms of access to information about and control over the arbitration process. The party that imposes the contractual obligation has selected the arbitral forum, may have participated in drafting the rules of that forum and be able to change those rules, may have participated in selecting the panel of arbitrators available in that forum and be able to change the composition of the panel, and is likely to have experience in using both that forum and particular arbitrators on the panel. The weaker party will not have had any of this participation or experience. Furthermore, where the stronger party requires the use of a particular forum, the natural tendency is for the weaker party to suspect the fairness of that forum. The disparity in information and control, combined with the tendency to suspect the imposed forum, contributes to the weaker party, as well as the public at large, mistrusting the arbitral process and, as the representative of that process, the arbitrator. To foster public confidence in the arbitration process in these circumstances, therefore, it may be appropriate to impose additional obligations on the arbitrator.

Based on the above premise, currently both standard 7(b)(12) and standard 10(d) establish differential obligations for arbitrators where the arbitration is taking place under a contract of adhesion. In light of commentators' concerns, we have reviewed (1) whether the differential obligations established by these two standards are appropriate to inform and protect participants and foster public confidence in the arbitration process in these circumstances and (2) whether these standards can be modified to better address these goals. As more fully discussed below, staff recommends that differential obligations established by 7(b)(12) remain in the standards but be amended to make them easier to understand, and staff recommends that the provisions in standard 10(d) that relate only to consumer arbitrations be deleted.

Dense/confusing language

Some commentators suggested that the standards are too dense and complicated and that they use confusing language. In particular, commentators pointed to the use of multiple definitions for lawyers representing parties in the arbitration and a lack of clarity about whether references to "cases" and "arbitrations" include collective bargaining cases and arbitrations.

Staff agrees that some of the adopted standards, particularly standard 7, are very dense and complicated. Staff also agrees that standard 7 and all of the standards should be edited wherever possible to make them easier to read and understand. We have reviewed all of the standards and are recommending many changes aimed at reducing the complexity and improving the clarity of the standards, including:

- Breaking the current standard 7 into three separate standards—one focused on disclosures required in all arbitrations (standard 7), one focused on the additional disclosures required in consumer arbitrations administered by a provider organization (standard 8), and one focused on arbitrators' duty to inform themselves about matters that must be disclosed (standard 9). The reorganized, shorter standards should be easier to read and understand. In addition, gathering together in a separate standard all of the provisions concerning arbitrators' duty of inquiry should make that obligation clearer;

- Adding the phrase "who are subject to these standards" to modify "arbitrator" in the first sentence of standard 1 and in the definition of "arbitrator" in standard 2. Commentator Ms. Nelson suggested that it is not sufficiently clear from the current definition of "arbitrator" in the standards whether we mean only those arbitrators covered by these standards;

- Modifying the definitions of "lawyer in the arbitration" and "lawyer for a party" to use similar language and to more closely track the language used in the statutory definition of "lawyer for a party." We agree with commentators that having two definitions for lawyers representing parties in the arbitration increases the complexity of the standards. However, as more fully discussed below, because of concerns about the breadth of the disclosure obligations that would be created if the statutory term "lawyer for a party" were used in all the provisions of standard 7, staff is not recommending a single definition for such attorneys;

- Adding "non–collective bargaining" before references to "cases" and "arbitrations" in 7(b)(4), (5), and (12) [renumbered 7(d)(4) and (5) and standard 8 in the proposed revision], as suggested by commentator Ms. Nelson, to make clear, as provided in Code of Civil Procedure 1281.9, that these cases and arbitrations do not need to be disclosed;

- Moving 7(d) and (f), which contain provisions generally applicable to all of the disclosure obligations in standard 7 to the beginning of standard 7 [renumbered 7(b) and (c) in the proposed revision]. Several comments we received suggested that readers missed these provisions when they were placed at the end of standard 7, creating some confusion about their application;

- Ensuring that, where the standards are simply re-iterating a statutory definition or obligation, the statutory language is used;

- Replacing cross-references in 7(b)(4) and standard 8 [renumbered 7(d)(4) and 10 in the proposed revision] to Code of Civil Procedure section 1281.9 with the relevant statutory language, so that readers do not have to look up these separate provisions; and

- Modifying the provisions in 7(b)(4), (5), and (12) [renumbered 7(d)(4) and (5) and standard 8 in the proposed revision] that describe the information that must be disclosed about prior cases, so that all three provisions use the same basic structure. A consistent structure should make these provisions easier to understand.

Despite these changes, the standards, particularly standard 7, are still long and complex, and some readers may find some of the language confusing. This is due at least in part to two general policy decisions that were made about the drafting of standard 7 (1) that standard 7 should not just list the new disclosure obligations created by these standards but should incorporate all existing statutory disclosure obligations, so that arbitrators can look to one provision to find all their disclosure obligations, and (2) that the statutory language should be used when reiterating a statutory disclosure obligation. This second decision was driven in part by the fact that Code of Civil Procedure section 1281.85 specifically authorizes the council to adopt standards that expand but do not limit existing statutory disclosure obligations. Thus, we wanted to be very careful not to use different language from the statute because any differences might suggest that the council was either expanding an existing disclosure obligation, where this was not intended, or trying to limit an existing disclosure obligation in contravention of its statutory authorization. While these drafting decisions do result in the standards being more complex, staff continues to believe that incorporating the statutory obligations into the standards and using the statutory language for these obligations is the best policy approach. Leaving the statutory obligations out of the standards would make the standards shorter and easier to understand, but staff believes that the omission would make it much more difficult for arbitrators to find and to understand what they are actually obligated to do under the combination of the standards and statute.

Negative impact on arbitration process

Some commentators raised concerns about the standards having a negative impact the arbitration process. In particular, these commentators expressed concern that the burdens of complying with these standards might cause delay in the arbitration process, increase the costs associated with arbitration, and drive arbitrators out of

the field, thus reducing disputants' access to qualified arbitrators and to the arbitration process itself. Several commentators also raised concerns about the impact of these standards on the finality of arbitration awards. In particular, some commentators suggested that these standards will result in disgruntled parties seeking to vacate arbitration awards on the basis of arbitrators' minor, technical violations of the standards—such as an inadvertent failure to disclose a matter that a reasonable person would not believe raises a question about the arbitrator's ability to be impartial.

As was stated in the April 2002 report to the Judicial Council recommending the adoption of these standards, staff agrees that these standards, particularly standards 7 and 10, impose new burdens on arbitrators that may increase costs and increase the time it takes to complete an arbitration. Staff also agrees that there is likely to be some increase in motions to vacate arbitration awards based on alleged violations of these standards. These standards are new. The specific statutory provision allowing vacatur for a failure to disclose, while based on existing case law, is also new. There is likely to be litigation that tests the implications of these new provisions. To the extent that such litigation takes place, it will mean new burdens—at least for a period—on arbitrators, on the arbitration system, and on the courts. Staff believes that the Legislature was cognizant of these potential burdens when it enacted Senate Bill 475 and that the Legislature made the fundamental policy choice that the benefit of adopting new mandatory ethics standards for contractual arbitrators outweighed the detriment of these potential burdens. Staff believes that the council also took these risks into consideration when it adopted the current standards.

While we believe that some additional burdens and risks associated with adoption of these standards were anticipated, we should still try to modify the standards wherever possible to reduce these burdens and risks. In reviewing each of the standards below in light of these concerns, staff have considered the following questions. (1) Does the standard create unanticipated burdens or risks that were not considered by the council when it adopted the standard? (2) Can the standard be amended in any way to reduce associated burdens and risks while achieving the same benefits? (3) Are the burdens and risks outweighed by the potential benefits of the standard in terms of ensuring the integrity and fairness of contractual arbitration proceedings in California? Based on this review, we recommend several substantive changes to the standards, including:

- Limiting the application of 7(b)(2) [renumbered 7(d)(2) in the proposed revision], as suggested by Ms. Camp, to the family members listed in the statute, rather than including all extended family members;

- Narrowing required disclosures concerning dispute resolution services other than arbitration under 7(b)(5) [renumbered 7(d)(5) in the proposed revision] to cases in which the arbitrator received or expects to receive compensation for these services;

- Deleting references in 7(e) [renumbered 7(f) in the proposed revision] to a continuing duty of inquiry. Arbitrators would still have a continuing duty to make disclosures about new matters of which they became aware.

- Adding new 9(c) to address the difficulty arbitrators face in obtaining information about the associates of the lawyers who are representing the parties in the arbitration. Similar in concept to former 7(b)(1) [renumbered 9(b) in the recommended revision], this provision would clarify what arbitrators must do to fulfill their duty of inquiry about relationships with such associates;

- Eliminating the requirement in former 10(d) that, in consumer arbitrations, arbitrators obtain the consent of the parties in a pending arbitration before taking any new employment from a party in that arbitration. Arbitrators in all arbitrations would still be obligated under 10(b) to disclose if they will entertain offers of employment from the parties while the arbitration is pending and would still be subject to disqualification based upon this disclosure.

In deciding whether to recommend any changes to the new obligations imposed by these standards, staff have specifically considered the risk that a failure to make any newly required disclosure or to meet any other newly imposed obligation might be used to seek vacatur of the arbitrator's award. However, as suggested above, staff believes that some of commentators' concerns about finality are actually concerns about the breadth of the statutory grounds for vacatur, not about the appropriateness of any of the new obligations imposed by the standards. For example, Mr. Brand states: "Section 1286.2 does not require any prejudice to a party for vacatur, only a technical failure of disclosure that leads to disqualification under Standard 8. The lack of any requirement that the technical failure to disclose affected the impartiality of the arbitrator can work a serious injustice on the winning party." Similarly, Mr. Donahey states that "there is no requirement that a violation of the disclosure standard actually prejudice the complaining party"; Ms. LaMothe states that, "since the Standards lack any materiality requirement, they simply give litigants an opportunity to delay the proceedings or worse, overturn an award"; and Ms. Rothman states that, "regardless of actual prejudice, the losing party will be able to utilize a *de minimis* failure to disclose as a way to delay enforcement of the Award." All of these comments appear to be expressions of concern about the fact that the new ground for vacatur recently added to the statute—that an arbitrator failed to disclose

within the time required for disclosure a ground for disqualification of which the arbitrator was then aware—does not require a showing of prejudice or is not clearly limited to failures to disclose matters that (as articulated in the overarching standard for disclosure) "could cause a person aware of the facts to reasonably entertain a doubt that the proposed arbitrator would be able to be impartial." As noted above, while these comments raise important concerns about this new vacatur provision, the council has no authority to modify the statutory grounds for vacatur. That authority lies with the Legislature. Staff therefore recommends that these concerns about the breadth of the grounds for vacatur be transmitted to the Legislature.

Civil liability based on violations of standards
Related to the potential for vacatur of arbitration awards, some commentators expressed concerns about violations of the standards, or vacatur based on such violations, being used as the basis for holding an arbitrator liable for monetary damages in a civil action.

Staff believes that these standards cannot determine what does or does not constitute a valid cause of action for civil damages; that determination must be made by the Legislature through statute or by the courts through case law. Staff also believes that no amendment to the standards could prevent a person from filing a claim for damages against an arbitrator on the basis of an alleged violation of the standards. However, staff believes that the standards could include an expression of intent concerning the standards' impact on civil causes of action.

We note that several other sets of ethics standards or standards of professional conduct include provisions expressing the intent of the drafters with regard to the standards' impact on civil liability. The Preamble to the Canons of Judicial Ethics, which also applies to judicial arbitrators, states that the canons do not "provide a separate basis for civil liability." Similarly, the rules of conduct for mediators in court-connected mediation programs adopted by the council state that the rules are not intended to "create a basis for a civil cause of action against a mediator." Rule 1-100 of the Rules of Professional Conduct for Attorneys also states that "these rules are not intended to create new civil causes of action. Nothing in these rules shall be deemed to create, augment, diminish, or eliminate any substantive legal duty of lawyers or the non-disciplinary consequences of violating such a duty."

Staff recommends that standard 1 be amended to include a similar expression of intent to neither affect any existing cause of action nor create any new cause of action. The members of the panel had mixed reactions to including this provision in the standards. Several members, including Ms. Hillebrand, Mr. Liebert, and Mr. Wong, suggested that the issue of the arbitrators' potential civil liability is a

minefield that should be avoided by the standards. Staff agrees that this topic is politically sensitive and has carefully tried to avoid the mines in this field by drafting the recommended provision to indicate clearly an intent to neither take away any existing course of action that may currently exist nor create any new cause of action.

Coverage/title of standards
Some commentators have suggested that these standards are inappropriately labeled as "ethics standards" because they establish mandatory rules of conduct rather than a system of general moral principals for arbitrators, and because the available remedy for violation of the standards is vacatur rather than any restriction on the arbitrator's practice. At least one commentator suggested that titling these "ethics standards" also places attorney-arbitrators at risk of complaints to the State Bar alleging professional misconduct for any violation of the standards. These commentators suggested that the standards be retitled as something like "rules of conduct" or that what they characterize as "procedural" requirements should be removed from the standards.

Staff does not recommend modifying the title of the standards. Code of Civil Procedure section 1281.85 provides: "The Judicial Council shall adopt ethical standards for all neutral arbitrators effective July 1, 2002." Thus, the authorizing legislation refers to the standards to be adopted as "ethical standards." The inclusion of mandatory rules of conduct within these standards does not seem incongruous with this title. Among the definitions of "ethics" is "the rules or standards governing the conduct of a person or the members of a profession" (*American Heritage Dictionary of the English Language*, 4th ed., p. 611). These standards appear to fall within that definition.

Staff also does not recommend eliminating any of the provisions on the basis that the provision is not appropriately included within a set of "ethics" standards. The provisions referred to by the commentator as "procedural" are actually disclosure requirements. Section 1281.85 explicitly requires that these "ethical standards" address disclosure. Staff therefore believes that disclosure obligations are appropriately included in these ethics standards.

Waiver of obligations under standards
Two commentators raised issues related to the waiver of obligations imposed by the standards. Linked with the earlier comment about the coverage/title of the standards, one commentator suggested that labeling "procedural" obligations in the standards as "ethical" requirements might interfere with the parties' ability to waive these obligations. The other commentator asked that the standards clarify whether waiver is permissible.

Staff does not believe that the issue of waiver should be addressed in the standards; we believe this is a matter for determination by the Legislature and the courts. First, in the area of disclosure and disqualification, where waiver is most likely to be sought, many of the obligations that are included in the ethics standards are actually statutory obligations. We do not believe that the council, through amendment of the standards, could authorize waiver of any statutory obligation. Second, there is already a general statutory provision that addresses when waiver is permissible. Civil Code section 3513 provides: "Any one may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement." We believe that it is the Legislature and, through case law, the courts that should appropriately determine whether these standards were "established for a public reason" and thus cannot be waived. Finally, in at least one area of arbitrator ethics, the Legislature has specifically stepped in to clarify that certain requirements are not waivable. Code of Civil Procedure section 1297.122, which relates to disclosures in international commercial arbitrations, provides that "the obligation to disclose information set forth in Section 1297.121 is mandatory and cannot be waived as to the parties with respect to persons serving either as the sole arbitrator or sole conciliator or as the chief or prevailing arbitrator or conciliator." For all these reasons, we believe that the issue of waiver is within the province of the Legislature, not the council.

Standard development and revision process

Several commentators, including panel members Mr. Holtzman and Mr. Roster, raised concerns about the process by which the standards were originally developed. In particular, they expressed concern about the limited time that was available both to staff for drafting the original standards and to panel members for reviewing drafts and other materials. Many commentators also suggested that the council establish some method for ensuring ongoing review and amendment of the standards. Others suggested that the Judicial Council suspend operation of the standards pending additional review and revision of the standards.

To the extent possible, we hope that commentators' concerns about the limited time to review the draft standards were addressed by the four-month postadoption comment period. Similarly, we hope that panel members are more satisfied with the time they have had to review the standards adopted by the council and the comments received during this postadoption circulation.

Staff agrees with commentators that, as with any set of rules, new issues are likely to arise as experience with the standards acccumulates or as new statutes affecting arbitration are adopted. Staff therefore recommends that the council direct staff to solicit comments again on these standards after January 1, 2004, and that, at that time, a task force be formed to assist staff in reviewing the standards and any

comments that are received. In the meantime, as with all rules and standards adopted by the council, suggestions for improving the standards are always welcome.

Staff does not believe it is appropriate or permissible for the council to suspend operation of the standards. Code of Civil Procedure section 1281.85 requires that, beginning July 1, 2002, neutral arbitrators comply with the ethics standards for arbitrators adopted by the Judicial Council and that the council adopt these standards effective July 1, 2002. Suspending operation of the standards would potentially place both arbitrators and the council in the position of violating statutory requirements.

Standard 1. Purpose, intent, and construction
Standard 1 states that these standards are adopted under Code of Civil Procedure section 1281.85 as minimum standards of conduct for contractual arbitrators and articulates the overall intent of the standards to guide the conduct of arbitrators, inform and protect participants, and promote public confidence in the arbitration process. The comment to the standard explains the relationship of these standards to the statutory grounds for vacatur of an arbitration award.

We received only one comment about this standard. The State Bar Committee on Professional Responsibility and Competence (COPRAC) supports this standard. None of the new statutory provisions affect this standard.

Staff recommends two changes to this standard. First, as noted above, to address Ms. Nelson's concerns that the term "arbitrator" as used in these standards is not clear, staff recommends adding "who are subject to these standards" to modify "arbitrators" in the first sentence. Also as noted above, we recommend adding new subdivision (d) stating that the standards are not intended either to affect any existing civil cause of action or to create any new civil cause of action and amending the comment to reflect this new provision.

Standard 2. Definitions
Proposed standard 2 defines words and phrases that have special meanings or are used repeatedly in the standards, including "arbitrator," "conclusion of the arbitration," and "consumer arbitration."

We received many comments on some of the definitions in this section; these comments are summarized below. We note also that Assembly Bill 3029, the arbitration-related bill that was adopted by the Legislature but ultimately vetoed by the Governor, included definitions of several terms also used in these standards or for which there is an equivalent defined term in the standards. The terms that were defined in AB 3029 include "consumer arbitration," "lawyer for a party,"

"neutral arbitrator," and "private dispute resolution company" (equivalent to "dispute resolution provider organization"). These vetoed definitions are discussed below where relevant.

2(a)—"Arbitrator"
The current definition of "arbitrator" and "neutral arbitrator" in subdivision (a) includes any arbitrator who is to serve impartially.

We received a comment from panel member Mr. Holtzman concerning the fact that this definition of "neutral arbitrator" includes arbitrators who are selected unilaterally by one party but who all parties agree are to serve impartially. Typically, unilateral selection of an arbitrator occurs where there is a three-member panel of arbitrators. In such an arbitration, each side typically selects one arbitrator unilaterally and those two arbitrators then select the third arbitrator. The third arbitrator always serves impartially. Typically, each of the two unilaterally selected arbitrators serves as an advocate for the side that selected them. However, in some cases, the parties may agree that all three arbitrators, including the unilaterally selected ones, are to serve impartially, as "neutral" arbitrators. Mr. Holtzman asks whether, under the standards, an arbitrator who is unilaterally selected by one party but who is to serve impartially would be subject to disqualification by the other party based upon required disclosures. He notes that other existing sets of ethics standards for arbitrators do not permit such disqualification. Other individuals, who attended educational presentations on the standards, raised this same issue with staff.

Under the standards as currently written, all neutral arbitrators must comply with all of the standards. Thus, a unilaterally selected "neutral" arbitrator would be subject to the disqualification provisions of the standards and could be disqualified by the other side. Staff believes that this is not a desirable result; in a tripartite arbitration, a party should be able to select his or her own arbitrator without interference by the other party. For this reason, staff recommends that unilaterally appointed arbitrators be deleted from the definition of neutral arbitrators.

As an alternative approach, staff considered trying to amend the standards to provide that unilaterally selected arbitrators are not subject to disqualification by the opposing party. This alternate approach was supported by panel members Mr. Wang and Mr. Madison. However, staff believes that deleting these unilaterally selected arbitrators from the definition of "neutral arbitrator" is preferable because it is clearer and because imposing the disclosure obligations on these arbitrators could have the unintended consequence of discouraging party-appointed arbitrators from serving impartially, which we believe is not a positive result. We also note that the definition of "neutral arbitrator" that was included in Assembly Bill 3029 did not include unilaterally selected arbitrators.

2(c)—"Conclusion of the arbitration"
The definition of "conclusion of the arbitration" determines the end of the application period for most of the duties established by these standards. Two commentators pointed out that the standards' current definition of "conclusion of the arbitration" does not address situations in which the arbitration ends because of settlement or dismissal. In response to these comments, staff recommends that 2(c) be amended to add "settled or dismissed" to the definition.

2(d)—"Consumer arbitration"
As noted above, the term "consumer arbitration" is used in these standards to identify arbitrations in which there are heightened concerns about access to information, control over the process, and fairness that warrant additional duties for the arbitrator. The standards' definition of "consumer arbitration" encompasses arbitrations conducted under a predispute arbitration provision in contract in which (1) one of the parties is a consumer party, (2) the contract was drafted by or on behalf of the nonconsumer party, and (3) the consumer party was required to accept the arbitration provision. This definition is modeled after a definition of consumer arbitration in 1998 legislation (Sen. Bill 19 from the 1997–1998 legislative session).

We received numerous comments about this definition, including some from panel members Ms. Hillebrand, Mr. Kagel, and Mr. Madison. These comments, variously, suggest that the definition of "consumer arbitration" could be broader; suggest that the definition is too broad; observe that the definition is vague and should use more common legal language relating to contracts of adhesion; recommend not changing the language in response to a proposed statutory definition of "consumer arbitration" that was in AB 3029; and ask that we amend the definition so that arbitrators know at the outset of an arbitration whether it is a "consumer arbitration."

Staff agrees with a common thread uniting these comments—that the definition should be as clear as possible so that arbitrators can recognize these consumer arbitrations in advance and fulfill their related duties. However, staff does not believe that amending the standard to incorporate either the language from cases concerning contracts of adhesion or the vetoed statutory language would promote this goal.

The Supreme Court has stated that the term "contract of adhesion" "signifies a standardized contract, which, imposed and drafted by the party of superior bargaining strength, relegates to the subscribing party only the opportunity to adhere to the contract or reject it." (*Armendariz v. Foundation Health Psychcare Services, Inc*. (2000) 24 Cal.4th 83, 113.) Staff believes that the standard's

definition of "consumer arbitration" incorporates the elements of a contract of adhesion identified in this case—a contract drafted and imposed by the party of superior bargaining strength, which the weaker party can only accept or reject—but uses less complex language. Staff believes that replacing the standard's language with the language from this case would not make this definition clearer.

AB 3029 defined "consumer arbitration" as:

> an arbitration that is binding on the consumer and conducted under a predispute arbitration provision contained in a contract that meets both of the following criteria: (1) the contract is with a "consumer party" and (2) the arbitration provision is contained in a printed form agreement or was drafted by or on behalf of, or inserted by or on behalf of, the nonconsumer party.

This definition contains provisions very similar to the first two parts of the standard's definition of consumer arbitration, but leaves out the third part—that the party was required to accept the arbitration provision. An approach similar to Assembly Bill 3029's was also suggested by panel member Ms. Hillebrand in comments submitted both before and after the adoption of the standards. At the time the standards were adopted, staff recommended against this approach on the basis that the situations that most warrant heightened concern are those in which a consumer party is required to accept the arbitration provision or forgo the entire contract. Staff noted then that the ability to voluntarily choose whether or not to participate in an arbitration serves as a form of protection from potentially unfair arbitration processes so that there is less need for imposing additional duties on arbitrators when the arbitration was entered into voluntarily. Staff continues to believe that, for the purposes served by this term in these standards, it would not be appropriate to eliminate the element of required acceptance of the arbitration provision from the definition of "consumer arbitration." Furthermore, eliminating this element does not address arbitrators' concerns about the difficulty in determining whether the nonconsumer party drafted the contract.

While staff is not recommending any amendments to the standard's definition of "consumer arbitration," we note that current standard 7(b)(12)(H) [standard 8(a)(2) in the proposed revision of the standards] attempts to address some of the concern about situations where the arbitrator does not know it is a consumer arbitration, by providing that an arbitrator is not required to make the "consumer arbitration" disclosures if the arbitrator reasonably believes that the arbitration is not a consumer arbitration based on reasonable reliance on a consumer party's representation that the arbitration is not a consumer arbitration.

2(g)—"Dispute resolution provider organization"
The definition of "dispute resolution provider organization" in the standards encompasses any individual or entity, other than a court, that coordinates, administers, or provides the services of two or more dispute resolution neutrals. This definition is used in current standard 7(b)(12)'s [standard 8 in the proposed revision] requirement that arbitrators make disclosures concerning any relationship between any provider organization administering the arbitration and the parties or attorneys in the arbitration.

We received a couple of comments concerning this definition. One commentator noted that the then-pending AB 3029 included a slightly different definition for "private arbitration company," the equivalent of what the standards define as a "provider organization." Another commentator asked that the definition be amended to exempt government entities that simply provide lists of neutrals but do not otherwise administer arbitrations.

Staff recommends that this definition be amended to encompass only nongovernmental entities.

Assembly Bill 3029 defined "private arbitration company" as:

> any *nongovernmental* entity or individual that holds itself out as managing, coordinating, or administering arbitrations, or providing the services of neutral arbitrators, or making referrals or appointments to, or providing lists of, neutral arbitrators. [Emphasis added.]

Given that Assembly Bill 3029 was not enacted, there is no imperative that this definition be incorporated into the standards. However, staff believes it is appropriate to take into account the fact that this definition excluded governmental entities. In the context of these standards, the term "provider organization" is used for the purpose of identifying entities that administer contractual arbitrations and that may have financial relationships and affiliations with the parties or attorneys that should be disclosed. We do not believe that government entities either administer private, contractual arbitrations or are likely to have the type of financial relationships or affiliations about which disclosure is being sought in these standards.

2(k) and (l) [relettered (l) and (m) in the proposed revision]—"Lawyer for a party" and "lawyer in the arbitration"
The definition of "lawyer for a party" in standard 2 encompasses any lawyer actually representing a party and any lawyer currently associated, in the practice of law, with a lawyer hired to represent a party. This definition is based on Code of

Civil Procedure section 1281.9(c), which defines "lawyer for a party" to include "any lawyer or law firm currently associated in the practice of law with the lawyer hired to represent a party." In contrast, the definition of "lawyer in the arbitration" encompasses only the lawyer who is present at the arbitration hearing or who is identified in any arbitration brief or any other papers submitted to the arbitrator as representing a party for purposes of the arbitration. These definitions are used in these standards primarily to delineate relationships that must be disclosed by arbitrators.

Several commentators, including panel member Mr. Holtzman, point out the breadth of the term "lawyer for a party" and suggest that this definition, when used in the disclosure requirements, creates a huge disclosure burden on arbitrators. As noted above in the section on general comments, several commentators also find it confusing that the standards use two definitions for lawyers who represent parties in the arbitration. Some pointed out additional ways in which the standards' references to lawyers are unclear, including that the standard's definition of "lawyer for a party" is slightly different from the statutory definition of that term and that the standards do not include a definition of the term "private practice of law," which is used several times in the standards.

As noted above, although we agree with commentators that having two definitions of attorneys who are representing parties in the arbitration increases the complexity of the standards, staff is not recommending a single definition for such attorneys. Code of Civil Procedure section 1281.9 defines "lawyer for a party" to include "any lawyer or law firm currently associated in the practice of law with the lawyer hired to represent a party." This inclusion of the lawyer's associates makes "lawyer for a party" a very expansive term and, in turn, makes the disclosure obligations where this term is used very expansive. Because Code of Civil Procedure section 1281.85 prohibits the council from limiting any statutory disclosure obligations, where "lawyer for a party" is used in the statute, the council does not have the authority to eliminate arbitrators' obligation to make disclosures concerning lawyers or law firms associated with a lawyer representing a party. However, the council is not required to use the expansive "lawyer for a party" term in other disclosure requirements in the standards. Because of concerns about the practical burden it would place on arbitrators to try to make disclosures about associates of a lawyer representing a party in all circumstances, "lawyer for a party" was generally not used except where the term already appears in statute. Instead, we have used the narrower term "lawyer in the arbitration." In the interest of making the standards easier to understand, the council could expand these other disclosure requirements by using "lawyer for a party" instead of "lawyer in the arbitration." Staff continues to believe, however, that such an expansion is not warranted and, thus, that two different terms for lawyers representing parties in the arbitration are needed in these standards.

While staff is not recommending eliminating "lawyer in the arbitration," we recommend that the definitions of both "lawyer in the arbitration" and "lawyer for a party" be amended. First, as noted above, we recommend that the definition of "lawyer for a party" be amended to more closely track the language used in Code of Civil Procedure section 1281.9's definition by restoring the reference to law firms and replacing the reference to "*a* lawyer" with "*the* lawyer."

Second, we recommend replacing the current definition of "lawyer in the arbitration" with "lawyer hired to represent a party in the arbitration" and similarly modifying the definition of "lawyer for a party" to refer to the "lawyer hired to represent a party in the arbitration." Some commentators have read the phrase "lawyer hired to represent a party," which appears in both section 1281.9 and in the standard's definition of lawyer for a party, to potentially include not only a lawyer hired to represent a party for purposes of the arbitration, but also a lawyer hired to represent a party for another, unrelated purpose, such as a divorce or criminal matter. In a recent newspaper article, one commentator suggested that by using different language in the standard's current definition of "lawyer in the arbitration"—language that more clearly states that the phrase means a lawyer representing a party for purposes of the arbitration—we have, by implication, actually enhanced the likelihood that the phrase will be interpreted to include lawyers hired for purposes *other than* the arbitration. This was not our intent. We believe that the intended meaning of "lawyer hired to represent a party," in the statute and these standards, is the lawyer hired to represent the party in the arbitration process. To avoid any alternate implication created by contrasting language, we recommend that both these definitions be amended to use similar language—a "lawyer in the arbitration" would be defined as "the lawyer hired to represent a party in the arbitration" and a "lawyer for a party" would be defined as "the lawyer hired to represent a party in the arbitration and any lawyer or law firm associated in the practice of law with the lawyer hired to represent a party in the arbitration."

While staff believes that this modified definition of "lawyer for a party" reflects the intended meaning of this statutory term, adding the phrase "in the arbitration" at the end of the definition does result in the standards' language being slightly different from the statutory language. There is some risk that, if challenged, a court might conclude that this difference from the statutory language constitutes a narrowing of the meaning of "lawyer for a party" in contravention of Code of Civil Procedure section 1281.85's prohibition on the council limiting existing statutory disclosure obligations. However, staff believes that this risk is small and there is a large countervailing benefit in alleviating some commentators' concerns about "lawyer for a party" being interpreted to include lawyers hired for purposes other than representing a party in the arbitration.

Staff is also recommending several other changes to address commentators' concerns about the standards' references to lawyers representing parties in the arbitration, including:

- Adding a new definition for the term "private practice of law" in proposed new standard 2(r). This term is used in some of the disclosure provisions that originate from Code of Civil Procedure section 170.1. The definition cross-references Code of Civil Procedure section 170.5, which provides the definitions applicable in section 170.1;

- Deleting the special definition of "lawyer in the arbitration" that appears in current standard 7(b)(2)(A) and instead incorporating the substance of this provision into proposed new 7(d)(7)(C). We believe this will improve clarity and more closely tracks the statutory language in Code of Civil Procedure section 170.1; and

- Adding a sentence to standard 2's comment, highlighting that there are two definitions for lawyers representing parties in the arbitration.

In addition to recommending these changes, we also recommend that commentators concerns about the expansive nature of the statutory definition of "lawyer for a party" be transmitted to the Legislature.

Standard 3. Application and effective date
Standard 3 provides that the ethics standards adopted by the council apply to all arbitrators appointed to serve on or after July 1, 2002, in any arbitration under an arbitration agreement subject to the California Arbitration Act (CAA) or in which the arbitration hearing is to be conducted in California. This standard also specifically provides that the standards are not applicable to international, judicial, automobile warranty, attorney-client fee dispute, workers' compensation, or contractor state license board arbitrations or to arbitrations conducted under or arising out of public- or private-sector labor-relations laws, regulations, ordinances, statutes, or agreements.

Commentator Ms. Hartmann from the Office of the Independent Administrator for the Kaiser arbitration system has asked that if the Council elects to make changes to the standards, these changes NOT be implemented effective January 1, 2003. She states that they fear that they will not have the time to modify their rules and procedures and contact their neutrals about these potential changes in three weeks between the council's December 13 meeting and January 1, 2003, especially with the intervening holidays. They would like more time to implement any changes adequately.

While staff understands this concern, we also believe that it is important that changes which clarify the standards or reduce burdens associated with the standards go into effect as quickly as possible. In addition, current standard 7(b)(12) has not yet taken effect, it was adopted in April 2002 with an effective date of January 1, 2003. We believe that it is important to make any necessary modifications to this provision before it goes into effect. Staff is therefore recommending that the proposed amendments to the standards take effect on January 1, 2003

Panel Chair Professor Jay Folberg also raised a question about the impact of any amendments on pending arbitrations. Staff is not recommending that any of these amendments be given retroactive effect. The intent is that the newly amended provisions take effect on January 1, 2003 and apply to those duties that arise under the standards after that effective date. So, for example, disclosures made by an arbitrator before January 1, 2003 would be required to comply with the standards in effect at that time and would not have to be "re-done" to comply with the amended standards. Disclosures made on or after January 1, 2003 would be required to comply with the amended standards. Similarly, before January 1, 2003 an arbitrator would be required to seek the consent of parties in a consumer arbitration in order to accept an offer of new employment from a party or attorney, but, if the standards are amended as recommended to delete this requirement effective January 1, 2003, on or after January 1, 2003, an arbitrator would no longer be required to seek such consent in any new or pending arbitration.

Several commentators suggested that standard 3(b) be broadened to exempt arbitrators in certain other types of arbitrations from coverage under the standards, including arbitrations between labor organizations or between governmental entities (Ms. Callahan of the Department of Industrial Relations), arbitrations conducted by NASD and other arbitration forums that are "subject to Federal Commissions" (Mr. Geerdes), and arbitrations that take place based on a postdispute submission agreement rather than a predispute agreement (Ms. Nelson).

Staff believes that the standards cannot exempt arbitrators who are required by statute to comply with the standards. As noted above, Code of Civil Procedure section 1281.85 provides that:

> Beginning July 1, 2002, a person serving as a neutral arbitrator pursuant to an arbitration agreement shall comply with the ethics standards for arbitrators adopted by the Judicial Council pursuant to this section.

Thus, if the person is serving as a neutral arbitrator in an arbitration that is being conducted pursuant to an arbitration agreement, this statute requires that arbitrator to comply with these standards. The arbitrations that are identified in 3(b) as exempt from the standard are only those that are not covered by the statutory requirement for compliance with the standards: they are arbitrations that take place under statutory schemes which specifically state that the Code of Civil Procedure section requiring compliance with the standards does not apply (e.g., international, judicial, and attorney-client fee arbitrations); dispute resolution processes that are actually not arbitration (e.g., the motor vehicle warranty "arbitrations"); arbitrations where there is not an agreement to arbitrate (e.g., workers' compensation arbitrations); and arbitrations specifically exempted under section 1281.85 (e.g., collective bargaining arbitrations).

Code of Civil Procedure section 1281.85 and the surrounding statutes do not distinguish between predispute arbitration agreements and postdispute submission agreements in terms of the application of the standards; section 1281 specifically refers to agreements to submit to arbitration both existing controversies and controversies that arise later. Nor do these statutes include separate provisions about arbitrators in arbitrations conducted by organizations that are subject to federal regulation or arbitrations between labor organizations or between governmental entities. Given that the statutory obligation to comply with the ethics standards appears to encompass arbitrators in these arbitrations, staff does not believe that these arbitrations can be exempted through amendment of the standards.

Although staff does not believe that this section can be amended to exempt the types of arbitrations identified by commentators, staff has made other changes that address some of the concerns raised by Ms. Callahan of the Department of Industrial Relations. As noted above, we have tried to clarify that, as specified in the statute, arbitrators are not required to disclose prior collective bargaining arbitrations. Thus, an arbitrator who does mostly labor arbitrations will not be required to disclose these prior labor arbitrations even when conducting an employment arbitration in which he or she is required to comply with these standards.

Standard 4. Duration of duty
Standard 4 specifies that, except as otherwise provided, arbitrators must comply with the standards adopted by the council, from acceptance of appointment as an arbitrator in a case until the conclusion of the arbitration.

We received no comments on this standard, and none of the new statutory provisions affect it.

Staff is not recommending any changes to this standard.

Standard 5. General duty
Standard 5 establishes arbitrators' overarching ethical duty to act in a manner that upholds the integrity and fairness of the arbitration process and to maintain impartiality toward all participants at all times.

We received only two comments on this standard, one from Ms. Camp of the National Futures Association and one from panel member Ms. Hillebrand. Both commentators support this standard. None of the new statutory provisions affect this standard.

Staff is not recommending any changes to this standard.

Standard 6. Duty to refuse appointment
Standard 6 requires a proposed arbitrator to decline appointment, notwithstanding the parties' request, consent, or waiver, if he or she cannot be impartial.

We received only two comments relating to this standard. Ms. Camp of the National Futures Association supports this standard. Mr. Owen suggests that the following disclosure obligations from standard 7 be incorporated here as grounds for refusing appointment:

- Any other matter that leads the proposed arbitrator to believe there is a substantial doubt as to his or her capacity to be impartial, including but not limited to, bias or prejudice toward a party, lawyer, or law firm in the arbitration;

- Any other matter that otherwise leads the arbitrator to believe that his or her disqualification will further the interests of justice;

- If the arbitrator is not able to properly perceive the evidence or properly conduct the proceedings because of a permanent or temporary physical impairment; and

- Any constraints on his or her availability known to the arbitrator that will interfere with his or her ability to commence or complete the arbitration in a timely manner.

In the draft of the standards circulated for public comment last winter, the last two items on this list were included in standard 6 as matters requiring arbitrators to decline appointment. The invitation to comment at that time specifically sought commentators' views on whether, instead of being required to decline appointment

for these reasons, proposed arbitrators should be required to disclose these matters to the parties and let the parties choose whether to disqualify them. The vast majority of the commentators responding to this question during the initial circulation took the latter view—that arbitrators should be required only to disclose these matters. Based on these comments, these two items were deleted as a basis for having to decline appointment under standard 6 and added to standard 7 as matters that must be disclosed by an arbitrator. Given the weight of these earlier comments, staff does not believe that the council should reverse its earlier decision to make these matters for disclosure rather than disqualification.

The other two items on this list are existing disclosure obligations from Code of Civil Procedure 170.1. Turning them into grounds for declining appointment would substantially increase the limitations on arbitrators. Staff does not believe such increased limitations are warranted.

For these reasons, staff is not proposing any changes to this standard in response to Mr. Owen's suggestion.

Standard 7. Disclosure

Overview
Standard 7 identifies the matters that must be disclosed to parties by a person who is nominated to serve or who is serving as an arbitrator and specifies the time frame within which these disclosures must be made. In large part, this standard consolidates and integrates the disclosure requirements that currently apply to contractual arbitrators under existing law, including those in Code of Civil Procedure sections 1281.9 and 170.1.[12] However, proposed standard 7 does invoke the Judicial Council's authority under Code of Civil Procedure section 1281.85 to expand existing disclosure requirements in the following ways:

- The opening language of standard 7(b) [moved to standard 9 in the proposed revision] expands the existing duty of reasonable inquiry with respect to financial interests that applies to arbitrators under Code of Civil Procedure section 170.1, to require arbitrators to make a reasonable effort to inform themselves about all matters that must be disclosed.

- Standard 7(b)(2) and—through the inclusion of domestic partners in the definition of "immediate family"—(b)(1), (3), (7), (8) and (11) [renumbered 7(d)(2), (3), (8), (9) and (12) in the proposed revision] expand required

[12] Code Civ. Proc., § 1281.9(a)(1) requires that contractual arbitrators disclose the existence of any grounds specified in § 170.1 for disqualification of a judge.

disclosures about the relationships or knowledge of arbitrators' family members required under both Code of Civil Procedure sections 170.1 and 1281.9 to include those of arbitrators' domestic partners.

- Standard 7(b)(4) [renumbered 7(d)(4) in the proposed revision] expands required disclosures about prior service as an arbitrator required under Code of Civil Procedure 1281.9 to include prior service as a neutral arbitrator selected by a party arbitrator in the current arbitration;

- Standard 7(b)(5) [renumbered 7(d)(5) in the proposed revision] adds a new obligation to disclose current or prior service as a dispute resolution neutral other than an arbitrator for a party or attorney in the current arbitration. Note that Code of Civil Procedure section 1281.85 specifically requires that the standards address this topic.

- Standard 7(b)(4), (5) and (12) [renumbered 7(d)(4) and (5) and standard 8 in the proposed revision] adds a new obligation requiring that if a disclosure includes information about five or more cases, arbitrators must provide a summary of that information.

- Standard 7(b)(7)(A) and (B) [renumbered 7(d)(8)(A) and (B) in the proposed revision] establishes specific requirements for arbitrators to disclose if they or a member of their immediate family is or, within the previous two years, was an employee, expert witness, or consultant for a party or a lawyer in the current arbitration.

- Standard 7(b)(9) and (10) [renumbered 7(d)(10) and (11) in the proposed revision] establishes specific requirements that arbitrators disclose if they or a member of their immediate family has an interest in the subject of the arbitration or an interest that could be substantially affected by the outcome of the arbitration.

- Standard 7(b)(12) [moved to new standard 8 in the proposed revision] expands the existing requirement, under Code of Civil Procedure section 1281.95, that arbitrators disclose information about a provider organization's relationship with the parties (which now applies only in certain residential construction arbitrations) to require that, in consumer arbitrations that are administered by a provider organization, arbitrators disclose: (1) information about any financial or professional relationship between that provider organization and parties or attorneys in the arbitration, including information about prior cases involving those parties or attorneys in which the provider administered dispute resolution

services; and, (2) if any such relationship exists, information about the arbitrator's relationship with that provider organization.

- Standard 7(b)(13) [renumbered 7(d)(13) in the proposed revision] establishes a specific requirement that arbitrators disclose membership in organizations that practice invidious discrimination on the basis of race, sex, religion, national origin, or sexual orientation.

- Standard 7(c)(2) [renumbered 7(e)(2) in the proposed revision] requires arbitrators to disclose any known constraints on their availability that will interfere with their ability to commence or complete the arbitration in a timely manner.

- Standard 7(e) and (f) [renumbered 7(f) and (c) in the proposed revision] clarifies that the duty to make disclosures is a continuing obligation and requires arbitrators to disclose, within 10 days of becoming aware of them, matters that were not known at the time of nomination or appointment.

We received many comments concerning standard 7. Some of these are general comments about the disclosure obligations; others address particular subdivisions within this standard.

General Comments Concerning Disclosure Obligations
Many commentators believe standard 7 is too complicated and that the disclosure obligations it creates are too detailed and burdensome. A few commentators, including panel members Mr. Holzman and Mr. Roster, suggest that the entire approach to disclosure may need to be rethought, perhaps moving to a shorter, general disclosure standard rather than listing specific relationships or affiliations that must be disclosed. As also discussed in relation to general comments above, some commentators raised concerns about this standard's potential negative impact on the arbitration process—that the burdens of complying with this standard will cause delay in the arbitration process, increase the costs associated with arbitration, and drive arbitrators out of the field thus reducing disputants' access to qualified arbitrators and to the arbitration process itself. Several commentators also raised concerns about the impact of this standard on the finality of arbitration awards, suggesting that it will result in parties' seeking to vacate arbitration awards for arbitrators' inadvertent failure to disclose a matter that a reasonable person would not believe raises a question about the arbitrator's ability to be impartial. Finally, some commentators suggest that parties and attorneys should have a corresponding duty to disclose relationships or affiliations.

It is very difficult to tell from some of these comments whether the basis of the commentators' concern is the standards, the underlying statutes relating to

contractual arbitration, or some combination of these two. Code of Civil Procedure sections 1281.9 and 170.1 include provisions that specify in detail the facts that must be disclosed by an arbitrator, including whether a member of the arbitrator's extended family is a party or is an attorney in the arbitration, any business or significant personal relationship between the arbitrator and a party or attorney for a party, and prior arbitrations conducted by the arbitrator involving a party or an attorney for a party. Standard 7 both restates these detailed statutory disclosure obligations and adds new requirements. Many commentators do not indicate the specific requirements in standard 7 that they believe are problematic, making it is impossible to tell whether they are objecting to an existing statutory obligation that is simply restated in the standards or to a new obligation created by these standards.

Where the comments do indicate the problematic parts of standard 7, many point to provisions that simply restate statutory obligations, such as those concerning extended family members or lawyers who are associated in the practice of law with the lawyer in the arbitration. As discussed above, the council does not have the authority to relieve arbitrators of these obligations; Code of Civil Procedure section 1281.85 specifically prohibits the council from limiting any existing statutory disclosure obligations. The council's choice is essentially only whether these statutory disclosure obligations should or should not be restated in the standards. For the reasons already discussed, staff continues to believe the better policy is to include these statutory obligations in the standards.

The council also has no authority to modify the grounds for vacatur of an arbitration award or to establish obligations for parties or attorneys who are participating in an arbitration. As discussed above, the grounds for vacatur are set by statute, not these standards. Code of Civil Procedure section 1281.85 did not delegate to the council any authority concerning vacatur, nor did it delegate to the council any authority with regard to parties or attorneys.

While the council does not have the authority to address these concerns through amendment of the standards, these comments indicate that there is strong public concern about the scope and operation of the arbitrator disclosure scheme as a whole that, to be addressed, would require action by the Legislature. We therefore recommend that all of the comments we received concerning standard 7 that appear to express concerns about statutory provisions or suggesting changes that can be implemented only by statute be transmitted to the Legislature for its consideration.

As already noted in the section on general comments, a few commentators suggested that the council suspend the operation of these standards to permit a comprehensive legislative review of this area. In the context of standard 7, this

would mean a suspension of all the new disclosure obligations imposed on arbitrators by this standard[13] (arbitrators' statutory disclosure obligations would obviously remain in place regardless of any action by the council). These commentators appear to believe that the current statutory structure is so problematic that the council should not add to it in any way.

While a comprehensive review of this area would be beneficial, staff believes that the council would be out of compliance with its statutory mandate if it suspended all of the disclosure provisions in standard 7 pending such a review. Code of Civil Procedure section 1281.85 specifically requires that the standards address "the disclosure of interests, relationships, or affiliations that may constitute conflicts of interest, including prior service as an arbitrator or other dispute resolution neutral entity." Section 1281.9 also specifically requires arbitrators to make the disclosures required by the council's standards. Thus, having no disclosure obligations in the standards does not appear to be a viable option within the council's statutory mandate.

While staff believes that relieving arbitrators of statutory disclosure obligations or eliminating all disclosure obligations from the standards are not viable options available to the court, staff have reviewed each new disclosure obligation created by these standards[14] to determine (1) whether it can be made less complex and easier to understand and (2) whether it creates any unanticipated burdens or risks or could be further amended to reduce any burdens and risks, and whether the irreducible burdens or risks associated with imposing the particular disclosure obligation are outweighed by its potential benefits. Although staff are not recommending that any of the specific disclosure obligations in standard 7 be completely eliminated, we recommend numerous changes designed to improve the clarity of standard 7 and to reduce the burdens and risks associated with this standard, including the following:

- Breaking the current standard 7 into three separate standards—one focused on disclosures required in all arbitrations (standard 7), one focused on the additional disclosures required in consumer arbitrations administered by a provider organization (standard 8), and one focused on arbitrators' duty to inform themselves about matters that must be disclosed (standard 9). The shorter standards should be easier to read and understand. In addition, gathering together in a new standard 9 all of the provisions concerning arbitrators' duty of inquiry should make that obligation clearer;

[13] See the list at the beginning of this section of the ways in which standard 7 expands on arbitrators' statutory disclosure obligations.
[14] See the list at the beginning of this section of the ways in which standard 7 expands on arbitrators' statutory disclosure obligations.

- Broadening 7(d)(1) [renumbered 9(b) in the proposed revision] to include other matters relating to an arbitrator's extended family, to clarify that this "safe harbor" provision also covers extended family members' knowledge of facts disputed in the arbitration;

- Narrowing the family members covered by 7(b)(2) [renumbered 7(d)(2)(A) in the proposed revision] to only those specified in the statute. The current standard uses "extended family" here in order to simplify the language, but this creates additional burdens for arbitrators;

- Replacing cross-references in 7(b)(4) [renumbered 7(d)(4) in the proposed revision] to Code of Civil Procedure section 1281.9 with the relevant statutory language, so that readers do not have to look up these statutory provisions in order to understand the standard;

- Adding "non–collective bargaining" before references to "cases" and "arbitrations," in 7(b)(4), (5), and (12)(A)(v) [renumbered 7(d)(4) and (5) and (8)(b)(1)(D) in the proposed revision], as suggested by commentator Ms. Nelson, to make clear, as provided in Code of Civil Procedure 1281.9, that these cases and arbitrations do not need to be disclosed;

- Modifying the provisions in 7(b)(4), (5), and (12) [renumbered 7(d)(4) and (5) and 8(b)(1)(1)(D) in the proposed revision] that describe the information that must be disclosed about prior cases, so that all three provisions use the same basic structure. A consistent structure should make these provisions easier to understand.

- Narrowing the disclosures concerning dispute resolution services other than arbitration that must be made under 7(b)(5) [renumbered 7(d)(5) in the proposed revision] to cases in which the arbitrator received or expects to receive compensation for these services;

- Eliminating former 7(b)(6)(B) as it unnecessarily repeats relationships covered under 7(b)(6), creating confusion;

- Clarifying that 7(b)(12) [renumbered as new standard 8 in the proposed revision] applies only to cases in which an arbitrator provider organization is administering the arbitration, and that required disclosures relate only to that provider organization's relationships with the parties, attorney, and arbitrator;

- Moving former 7(b)(12)(C) and (D) to the beginning of this standard 8 so that the specific requirements relating to disclosure of other cases involving the parties or attorneys in the arbitration are grouped together.

- Moving former 7(d) and (f), which contain provisions generally applicable to all of the disclosure obligations set forth in former 7(b), to the beginning of standard 7. Several comments we received suggested that readers missed these provisions when they were placed at the end of standard 7, creating some confusion about their application;

- Deleting references in 7(e) [renumbered 7(f) in the proposed revision] to a continuing duty of inquiry. Arbitrators would still have a continuing duty to make disclosures about new matters of which they became aware; and

- Adding new 9(c) to address the difficulty arbitrators face in obtaining information about the associates of the lawyers who are representing the parties in the arbitration. Similar in concept to former 7(b)(1) [renumbered 9(b) in the proposed revision], this provision would clarify what arbitrators must do to fulfill their duty of inquiry about relationships with such associates;

Staff believes that, taken together, these changes considerably improve the clarity or arbitrators' disclosure obligations under these standards and reduce the burdens on arbitrators while maintaining appropriate new disclosure requirements.

Proposed New Subdivisions (b) and (c)
As noted above, in order to improve the clarity of standard 7, staff recommends that current subdivisions 7(d) and (f) be moved to the front of standard 7, becoming new subdivisions (b) and (c). Several commentators, including Ms. Nelson, report that readers did not find these subdivisions in the back of this lengthy standard and therefore did not read the disclosure requirements with these general provisions in mind. Moving the provisions up front should make them easier for readers to find and thus help readers understand standard 7.

Former Subdivision (b) [renumbered (d) and new standard 9 in the proposed revision] The introductory language of subdivision (b) establishes arbitrators' general duty to disclose any matters that may cause a person aware of the facts to reasonably entertain a doubt that the proposed arbitrator will be able to be impartial. This requirement is taken almost verbatim from Code of Civil Procedure section 1281.9(a), which establishes arbitrators' statutory disclosure obligations. Subdivision (b) also establishes arbitrators' general duty to make a reasonable effort to inform themselves of such matters.

We received several comments about an arbitrator's duty to "make a reasonable effort to inform himself or herself of any matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed arbitrator would be able to be impartial." Some commentators have suggested that that the duty of inquiry is unnecessary, if not counterproductive, because arbitrators cannot be biased by what they do not know. Other commentators oppose this obligation because they believe that, when combined with the subsequent list of items that must be disclosed, it actually creates an unreasonable duty for arbitrators to make inquiries about such things as distant family relationships and associates of the lawyers in the arbitration. These commentators either do not consider this duty of inquiry to be limited by the term "reasonable" or the "safe harbor" provisions in 7(d) and 7(b)(12)(F) [renumbered 9(b) and 9(e) in the proposed revision] or believe these provisions inadequately protect arbitrators in the face of other language in the standard that they believe creates an absolute duty to disclose items identified in the standards. The State Bar Committee on Professional Responsibility and Competence (COPRAC), for example, suggests that arbitrators' duty to make "reasonable efforts" to inform themselves, when combined with the duty to disclose any "significant personal relationships" they or a member of their immediate family has or has had with any lawyer for a party, creates an obligation for arbitrators to track attorneys with whom they have had relationships as they move from law firm to law firm. COPRAC recommends that the disclosure obligation be specifically limited to matters "known" to the arbitrator and that the standards directly state that the duty of inquiry with regard to extended family is limited to what is required under the current "safe harbor" provision in 7(d).

Staff believes that it is sound policy to include a duty to make reasonable efforts to inform oneself about matters that need to be disclosed. The ABA/AAA Standards for Commercial Arbitrators, the most commonly followed set of ethics standards for arbitrators, contain a duty of inquiry almost identical to that in the council's standards.[15] Similar duties of inquiry also appear in other sets of arbitrator ethics

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[15] Canon II of the current ABA/AAA standards provides, in relevant part:

> CANON II–AN ARBITRATOR SHOULD DISCLOSE ANY INTEREST OR RELATIONSHIP LIKELY TO AFFECT IMPARTIALITY OR WHICH MIGHT CREATE AN APPEARANCE OF PARTIALITY OR BIAS
>
> A. Persons who are requested to serve as arbitrators should, before accepting, disclose
>
> 1. Any direct or indirect financial or personal interest in the outcome of the arbitration;

standards, including the Model Rule of Professional Conduct for the Lawyer as Third-Party Neutral proposed by the CPR-Georgetown University Commission on Ethics and Standards in ADR and JAMS' Ethics Guidelines for Arbitrators. Thus the concept of arbitrators having a duty to make a reasonable inquiry about matters that are subject to disclosure is not unique to these standards. Such a duty appears to be generally considered a necessary and appropriate element in promoting pubic confidence in the arbitration process.

However, we agree with COPRAC and other commentators that the relationship between the standards' general duty of inquiry and the "safe harbor" provisions relating to information about extended family members and other matters is not clear. We therefore recommend that the duty of inquiry and all of the related "safe harbor" provisions be moved out of standard 7 into a separate new standard 9. This should make these provisions easier to understand and should reduce the length and complexity of standard 7.

As already noted, some of the commentators expressed concern that the combination of the duty of inquiry and the duty to disclose create an unreasonable obligation for arbitrators because standard 7 does not specifically state that the duty of disclosure is limited to matters discovered though this inquiry process or otherwise "known" to the arbitrator. The lead-in language concerning disclosure in current standard (b) mirrors Code of Civil Procedure section 1281.9,[16] which states:

> In any arbitration pursuant to an arbitration agreement, when a person is to serve as a neutral arbitrator, the proposed neutral arbitrator shall disclose all matters that could cause a person aware

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> 2. Any existing or past financial, business, professional, family or social relationships which are likely to affect impartiality or which might reasonably create an appearance of partiality or bias. Persons requested to serve as arbitrators should disclose any such relationships which they personally have with any party or its lawyer, or with any individual whom they have been told will be a witness. They should also disclose any such relationships involving members of their families or their current employers, partners or business associates.
>
> B. Persons who are requested to accept appointment as arbitrators should make a reasonable effort to inform themselves of any interests or relationships described in the preceding paragraph A.

[16] If the staff recommendation to move the duty of inquiry to a separate standard is adopted, the lead-in language concerning the duty to disclose in standard 7 would be exactly the same as this statutory language.

> of the facts to reasonably entertain a doubt that the proposed neutral arbitrator would be able to be impartial, including all of the following: . . . .

Neither this statutory provision nor current 7(b) [renumbered 7(d) in the proposed revision] specifically states that arbitrators are required to disclose only those matters "known" to the arbitrator.

We note that the ABA/AAA standards similarly do not specifically state that disclosures are limited to matters "known" to the arbitrator. While there are not yet any cases interpreting the Judicial Council standards, there is one California case that examines the ABA/AAA standards. *Betz v. Pankow* (1995) 31 Cal.App.4th 1503 involved a motion to vacate an arbitration award based on an arbitrator's failure to disclose something that the arbitrator did not know. In that case, an arbitrator was not aware that the law firm with which he had previously been affiliated had represented one of the parties in the arbitration at the time the arbitrator worked for the firm. The court stated: "In short, Sandborg [the arbitrator] cannot be faulted for failing to disclose facts of which he was unaware." (*Id.* at 1511.) This suggests that a court is likely to interpret an arbitrator's duty to disclose in light of the practical reality that an arbitrator cannot disclose something that he or she does not know. The *Betz* case also specifically addresses what constitutes arbitrators' "reasonable effort to inform themselves" about relationships under the ABA/AAA standards:

> The AAA rules require arbitrators to make a *reasonable* effort to inform themselves of past financial, business or professional relationships which might reasonably create an appearance of bias. An attorney/arbitrator has not failed to make such a reasonable effort if he does not have access to files that might reveal a past relationship of the attorney's prior law firm or which the attorney had no personal knowledge. *(Ibid.)*

Thus, this case also suggests that a court is likely to take into account practical realities when interpreting an arbitrator's duty to "make a reasonable effort" to inform himself or herself of matters subject to disclosure, and a court is unlikely to interpret this requirement in a way that imposes unreasonable expectations on the arbitrator.

In addition, while current 7(b) [renumbered 7(d) in the proposed revision] does not refer to matters "known" to the arbitrator, current subdivision 7(f), which relates to the timing of disclosures, provides that an arbitrator must disclose, within the time required by the statute, all matters "of which the arbitrator is then aware" and similarly sets the time frame for disclosure of matters about which the arbitrator

subsequently "becomes aware." To ensure that readers are aware of this provision, staff recommends that it be moved to the beginning of standard 7, becoming new subdivision 7(c). We are also proposing that a new sentence be added at the beginning of the comment to standard 7, summarizing the overall scope and timing of required disclosures.

Subdivision (b)(1) [renumbered (d)(1) in the proposed revision]
Subdivision 7(b)(1) requires arbitrators to disclose if the arbitrator or a member of the arbitrator's extended family is a party, a party's spouse or domestic partner, or an officer, director, or trustee of a party. This provision is based on an existing statutory disclosure obligation that applies to contractual and judicial arbitrators under Code of Civil procedure section 170.1(a)(4).[17]

We received only one comment on this provision. Ms. Camp of the National Futures Association supports this provision. None of the new statutory provisions affect this standard.

Staff is not recommending any changes to this provision.

Subdivision (b)(2) [renumbered (d)(2)(A) in the proposed revision]
Subdivision (b)(2) requires arbitrators to disclose if the arbitrator, a member of the arbitrator's extended family, or the arbitrator's former spouse is a lawyer in the arbitration; the spouse or domestic partner of a lawyer in the arbitration; or currently associated, in the private practice of law, with a lawyer in the arbitration. Like the previous provision, this is based on an existing statutory disclosure obligation for both contractual arbitrators and judicial arbitrators under Code of Civil procedure section 170.1(a)(5).[18]

We received several comments on this standard.

Ms. Camp of the National Futures Association pointed out that the family members to whom this subdivision applies are broader those specified in Code of Civil Procedure section 170.1; this provision applies to all members of an arbitrator's extended family, while section 170.1(a)(5) applies only to the "the spouse, former spouse, child, sibling, or parent" of the arbitrator. Based on this

[17] Code Civ. Proc., § 170.1(a)(4) establishes as a ground for disqualification of a judge that "The judge, or the spouse of the judge, or a person within the third degree of relationship to either of them, or the spouse of such a person is a party to the proceeding or an officer, director, or trustee of a party."
[18] Code Civ. Proc., § 170.1(a)(5) establishes as a ground for disqualification of a judge that a "lawyer or a spouse of a lawyer in the proceeding is the spouse, former spouse, child, sibling, or parent of the judge or the judge's spouse or if such person is associated in the private practice of law with a lawyer in the proceeding."

comment, staff recommends that the family members covered by 7(b)(2) [renumbered 7(d)(2)] be limited to those specified in section 170.1. Staff had originally used the term "extended family" in this standard in order to promote consistency and thus make the standards easier to understand. From the comments of Ms. Camp, however, it appears that the benefits of clarity here are outweighed by the extra burden created for arbitrators.

COPRAC suggested that the special definition of "lawyer in the arbitration" that appeared in subdivision 7(b)(2)(A) was confusing. Staff agrees and is recommending that language be deleted from 7(b)(12) and that the substance of this provision be incorporated into a new disclosure requirement in proposed new subdivision 7(d)(7)(C). We believe this will improve clarity and that the new arrangement more closely tracks Code of Civil Procedure section 170.1, upon which this provision is based.

Subdivision (b)(3) [renumbered (d)(3) in the proposed revision]
This provision requires arbitrators to disclose if the arbitrator or a member of the arbitrator's immediate family has or has had a significant personal relationship with any party or a lawyer for a party. This mirrors an existing statutory disclosure obligation for contractual arbitrators under Code of Civil procedure section 1281.9(a)(6).[19]

We received three comments on this provision. Ms. Camp of the National Futures Association generally supported the concept of this disclosure obligation but suggested that it be limited to relationships in the recent past. COPRAC suggested that the term "significant personal relationship" is unclear and pointed out the breadth of this requirement, since "lawyer for a party" includes associates of the lawyer in the arbitration. Mr. Maltby of the National Workrights Institute similarly suggested that this obligation is too broad.

As noted above, Code of Civil Procedure section 1281.85 specifically prohibits the Judicial Council from limiting any existing statutory disclosure requirement. Standard 7(b)(3)'s requirements simply restate such an existing statutory obligation. Therefore, staff believes the council does not have the authority to narrow the obligation as suggested by the commentators. However, staff recommends that the comments concerning the breadth of the disclosure requirement be transmitted to the Legislature.

[19] Code Civ. Proc., § 1281.9(a)(6) requires that contractual arbitrators disclose any "professional or significant personal relationship the proposed neutral arbitrator or his or her spouse or minor child living in the household has or has had with any party to the arbitration proceeding or lawyer for a party."

Subdivision (b)(4) [renumbered (d)(4) in the proposed revision]
This provision requires arbitrators to disclose current or prior service as an arbitrator in other cases involving the parties or attorneys for the parties in the current arbitration. As with the previous provisions, this obligation is based on existing statutory requirements under Code of Civil Procedure section 1281.9(a)(3) and (4), which require disclosure of any pending or prior service in the previous five years as either a party arbitrator or a neutral arbitrator for a party or an attorney for a party.[20]

We received several comments on this provision. As noted above, Ms. Nelson, both in her individual capacity and as chair of the Bar Association of San Francisco's Labor and Employment Section, recommended adding "non–collective bargaining" before references to "cases" and "arbitrations" to make clear, as provided in Code of Civil Procedure 1281.9, that these cases and arbitrations do not need to be disclosed. Staff recommends this amendment as suggested.

We also received comments from Mr. Thompson and Mr. Owen that reflect some confusion about what information must be disclosed about all pending and prior cases and what must be disclosed about those prior cases arbitrated to conclusion. Code of Civil Procedure section 1281.9 requires arbitrators to provide the names of the parties in all pending and prior arbitrations and requires arbitrators to provide the results of each case arbitrated to conclusion. In response to these comments and to further the overall goal of clarifying the standards, we recommend two additional changes to this standard. First, we recommend that the references to the information that must be disclosed under Code of Civil Procedure section 1281.9 be replaced with the statutory language from that provision. This will eliminate the need for readers to look up these statutory provisions and should make the standard easier to understand. Second, we recommend that the provisions describing the information that must be disclosed about prior cases be modified to more clearly indicate what information must be disclosed about all cases, what information must be disclosed about cases where a decision is rendered, and what information must be included in any required case summary.[21] This new structure should make all of these provisions easier to understand.

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[20] Code Civ. Proc., § 1281.9(a)(3) requires that contractual arbitrators disclose "The names of the parties to all prior or pending noncollective bargaining cases in which the proposed neutral arbitrator served or is serving as a party arbitrator for any party to the arbitration proceeding or for a lawyer for a party and the results of each case arbitrated to conclusion, including the date of the arbitration award, identification of the prevailing party, the names of the parties' attorneys and the amount of monetary damages awarded, if any."

[21] We are proposing using this same format for the case information that must be disclosed under subdivisions 7(b)(5) and (12) [renumbered 7(d)(5) and 8 in the proposed revision]. The added consistency should make all of these provisions easier to understand.

This second change will result in a slight expansion of arbitrator's current statutory disclosure obligations with regard to other arbitrations. As noted above, in all pending and prior cases the statutes only require arbitrators to provide the names of the parties. The recommended revision to this standard would require the names of the parties and, where applicable, the name of the attorney in the current arbitration who was also involved in the other arbitration. Since the statute already requires arbitrators to identify and make disclosures about prior arbitrations involving a lawyer for a party in the current arbitration, requiring the arbitrator to disclose the name of the common attorney seemed like a reasonable requirement that would not create an appreciable additional burden.

Mr. Owen's comments also raised concerns about the breadth of the disclosure obligations created by the use of the term "lawyer for a party" in this provision. As Mr. Owen himself noted, Code of Civil Procedure section 1281.9 uses the "lawyer for a party" term in establishing this disclosure obligation, and therefore the council does not have the authority to narrow this existing statutory disclosure obligation. However, we believe that the recommended amendments to the definitions of "lawyer for a party" and "lawyer in the arbitration" discussed above will address some of Mr. Owen's concerns about how broadly this obligation might be interpreted. In addition, we recommend that Mr. Owen's concerns be transmitted to the Legislature.

Subdivision (b)(5) [renumbered (d)(5) in the proposed revision]
This provision requires arbitrators to disclose current or prior service as a dispute resolution neutral other than an arbitrator, including service as a temporary judge, referee, or mediator. Code of Civil Procedure section 1281.85 specifically requires that these standards address the disclosure of prior service as an arbitrator *or other dispute resolution neutral.*

We received several comments on this provision.

Ms. Camp from the National Futures Association suggested eliminating the requirement to make disclosure concerning these nonarbitration dispute resolution services because this is not an existing statutory disclosure requirement and because it is burdensome to track this information. While Code of Civil Procedure section 1281.9 does not address disclosure of pending or prior dispute resolution services other than arbitration, as noted above, section 1281.85 specifically requires that the standards adopted by the council address the disclosure of prior service as an arbitrator *or other dispute resolution neutral.* Therefore, staff believes that the standards must address this topic.

Ms. Diaz recommended that the standard require disclosure of five years of prior cases, rather than just two years. The two-year period was included in the standards because it tracks the disclosure obligations of judicial arbitrators, and Code of Civil Procedure section 1281.85 specifically requires that the standards adopted by the council be consistent with the standards for judicial arbitrators. Staff therefore believes that the two-year time frame is appropriate and should not be changed.

Ms. Glick, President of the California Dispute Resolution Council, suggested that there be an exclusion from disclosure for arbitrators who volunteer their time for courts in judge pro tem positions or as pro bono arbitrators or mediators in court-connected programs. Staff has heard similar suggestions from audience members at several presentations on the standards since their adoption. These commentators express concern about the burden for arbitrators of keeping track of pro bono service; they note that pro bono service does not raise the same type of policy concern about arbitrators being influenced by a potential stream of income from repeat business; and they suggest that this requirement might dissuade arbitrators from providing these pro bono services to the courts, community programs, or others who might not otherwise have access to such services. Based on these comments, staff recommends that this standard be amended to require disclosure only when an arbitrator received or expects to receive some form of compensation for these dispute resolution services. As amended, this provision would also be more consistent with the standards for judicial arbitrators, which require disclosure only of prior neutral services when the judicial arbitrator was privately compensated. In addition, this amendment should make this provision clearer. Currently, 7(b)(5) requires arbitrators to disclose any current or prior service as a dispute resolution neutral other than an arbitrator for a party or an attorney in the arbitration, but it requests specific information, including the names of the parties and outcome information, only if the arbitrator was or will be compensated for this service. This is confusing because it is not clear what, if any, information an arbitrator is currently obligated to provide about pending or prior uncompensated service.

As with subdivision 7(b)(4), Ms. Nelson, both in her individual capacity and as chair of the Bar Association of San Francisco's Labor and Employment Section, recommended adding "non–collective bargaining" before references to "cases" to make clear, as provided in Code of Civil Procedure 1281.9, that these cases do not need to be disclosed. Staff recommends this amendment as suggested.

In his comments, Mr. Thompson expressed concern about the burden of inquiry associated with making disclosures regarding prior dispute resolution services for attorneys associated in the practice of law with the lawyer in the arbitration. Staff believes that the recommended addition of new 9(c)—regarding the extent of

inquiry arbitrators must make concerning relationships with attorneys associated in the practice of law, with the lawyer in the arbitration (discussed in more detail below)—should address Mr. Thompson's concerns.

Proposed New Subdivision 7(d)(6)
New subdivision 7(d)(6) is being recommended in response to the enactment of AB 2504. This bill, which was signed into law by the Governor in October and will take effect on January 1, 2003, added new provisions to Code of Civil Procedure sections 170.1 and 1281.9. The amendment to section 1281.9 requires an arbitrator to disclose:

> whether or not he or she has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last two years, has participated in, discussions regarding such prospective employment or service with a party to the proceeding.

New subdivision 7(d)(6) would simply track this new statutory requirement.

Subdivisions (b)(6)–(b)(11) [renumbered (d)(7)–(12) in the proposed revision]
We received only a few comments on subdivisions 7(b)(6)–(11). Ms. Camp of the National Futures Association supports all of these provisions.

Mr. Owen suggests that 7(b)(8) should make clear that disclosure relates only to a direct financial interest, such as ownership of equity stock in a party, rather than ownership of mutual funds. Staff believes that this concern is addressed by the definition of "financial interest" in Code of Civil Procedure section 170.5, which is made applicable to these standards under standard 2(i). Section 170.5 provides:

> Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in those securities unless the judge participates in the management of the fund.

COPRAC expressed concern that 7(b)(11), when combined with the arbitrator's duty of inquiry under 7(b), would require the proposed arbitrator to inform himself or herself of each extended family member's possible knowledge of disputed facts relevant to the arbitration. Staff believes this concern has been addressed by the clarification of the duty of inquiry in proposed new standard 9(b), discussed below.

Staff is not recommending any changes to these provisions.

Subdivision (b)(12) [renumbered new standard 8 in the proposed revision]
Subdivision (b)(12) requires arbitrators in "consumer arbitrations" that are being administered by a dispute resolution provider organization to disclose any significant past, present, or currently expected financial or professional relationship or affiliation between that provider organization and a party or lawyer in the arbitration. If such a relationship or affiliation is disclosed, the standard also requires arbitrators to disclose (1) any financial relationship or affiliation the arbitrator has with the provider organization, other than receiving referrals of cases; and (2) the role, if any, the provider organization plays in establishing criteria for and recruiting, screening, or training the panel of arbitrators from which the arbitrator in this case is to be selected and in identifying, recommending, and selecting potential arbitrators for specific cases. There is an existing statutory obligation to make disclosures concerning provider organizations' relationships with parties that now applies only to arbitrators in arbitrations involving the construction or improvement of multifamily residential units.[22] Standard 7(b)(12) expands that disclosure obligation to apply to all consumer arbitrators administered by a provider organization and expands the specific disclosures required.

As when a draft of the standards was circulated for comment last winter, this standard again generated a great deal of comment.

Most of the commentators expressed the view that this requirement should be deleted from the standards. These commentators objected to the standard as creating an obligation for arbitrators to disclose information that they do not currently have and that they cannot necessarily obtain. They noted that the information about the provider organizations' relationships with the parties or

[22] Code Civ. Proc., § 1281.95 provides "(a) In a binding arbitration of any claim for more than three thousand dollars ($3,000) pursuant to a contract for the construction or improvement of residential property consisting of one to four units, the arbitrator shall, within 10 days following his or her appointment, provide to each party a written declaration under penalty of perjury. This declaration shall disclose (1) whether the arbitrator or his or her employer or arbitration service had or has a personal or professional affiliation with either party, and (2) whether the arbitrator or his or her employer or arbitration service has been selected or designated as an arbitrator by either party in another transaction.

(b) If the arbitrator discloses an affiliation with either party, discloses that the arbitrator has been selected or designated as an arbitrator by either party in another arbitration, or fails to comply with this section, he or she may be disqualified from the arbitration by either party.

(c) A notice of disqualification shall be served within 15 days after the arbitrator makes the required disclosures or fails to comply. The right of a party to disqualify an arbitrator shall be waived if the party fails to serve the notice of disqualification pursuant to this subdivision unless the arbitration makes a material omission or material misrepresentation in his or her disclosure. Nothing in this section shall limit the right of a party to vacate an award or to disqualify an arbitrator pursuant to subdivision (e) of Section 1282, Section 1286.2, or any other law or statute."

attorneys is in the hands of the provider organizations, not the arbitrators, and therefore they believe that these provider organizations, not arbitrators, should be required to disclose this information. Provider organizations and other commentators also suggested that this standard indirectly places a large new administrative burden on provider organizations because arbitrators will turn to their providers for this information. Mr. Slate of the American Arbitration Association (AAA) noted that AAA does not currently maintain readily accessible records containing much of the information sought in this standard. Some commentators suggested that the administrative burdens imposed by this standard may result in large provider organizations either leaving California or refusing to participate in consumer arbitrations. They suggested that such a flight of the large providers, in turn, would reduce access to arbitration services for California consumers, leaving them with only small provider organizations or independent arbitrators who cannot provide or do not have access to the type of educational or administrative support available through the large providers. Thus, opponents argue, this standard will have the contrary effect of actually harming the consumer parties it is seeking to protect.

Other commentators urged that this requirement remain in the standards. They suggested that it is appropriate for arbitrators to be responsible for disclosing information about a provider organization with which they are affiliated because, both in reality and in the eyes of the public, the provider organization acts as the arbitrator's agent in procuring cases. A provider organization, they argue, has a direct interest in cultivating and maintaining relationships with parties who can be a source of an ongoing stream of business for the organization. In turn, every arbitrator who receives cases from a provider organization benefits directly from the activities undertaken by that organization to cultivate and maintain that stream of cases. Supporters of this provision also suggested that disclosure of information about provider organization relationships with the parties or attorneys should improve public confidence in the integrity and fairness of the arbitration process. They observed that some of the concerns about provider organization relationships with parties or attorneys are fostered by the fact that parties currently do not know whether, or the extent to which, these relationships exist in a particular case. Parties fear what they do not know. By requiring disclosure, this standard can dispel that fear; parties will know they are getting information about such relationships and, where the disclosures reveal no troublesome relationships, can go forward with greater confidence in the integrity and fairness of the arbitration process. Furthermore, the provision's supporters suggested that the awareness that these relationships will be disclosed may also encourage both parties and provider organizations to minimize the types of relationships that raise concerns for parties and the public, and thereby increase public confidence in the arbitration process.

All of the issues raised by these comments were also raised by commentators when the draft of these standards was circulated last winter. These earlier comments were outlined in the report submitted to the council in April 2002. After weighing those earlier comments, the council voted to adopt this standard. Staff does not believe that any of the current comments identify new burdens or risks that the council did not weigh when it adopted this standard, and thus staff believes these comments do not warrant the council's changing its position concerning this standard.

However, as noted by commentators, there has been recent legislative activity relating to provider organizations that may impact this standard. As indicated in the April 2002 report to the council, staff agrees with opponents of this provision that direct regulation of provider organizations might more efficiently address some of the concerns about bias or the appearance of bias created when provider organizations have relationships with parties or attorneys in an arbitration they are administering. Thus, if the recent legislation directly addresses these concerns about bias or the appearance of bias, then it may obviate the need for the standards to address these concerns.

Staff has reviewed all the arbitration provider–related bills enacted during the last legislative session. These bills neither prohibit nor require direct disclosure by provider organizations of most of the relationships and affiliations that must be disclosed under standard 7(b)(12), and therefore staff does not believe these bills warrant the elimination of this standard.

Standard 7(b)(12) [new standard 8 in the proposed revision] requires arbitrators to disclose any significant past, present, or currently expected financial or professional relationship between any provider organization administering the arbitration and the parties or attorneys in that particular arbitration, including whether:

- The provider organization has a financial interest in a party;

- The party or attorney has a financial interest in or is a member of the provider organization;

- The party or attorney gave a gift to the provider organization within the last two years;

- The party or attorney has an agreement with the provider organization to administer dispute resolution services in other cases; and

- The provider organization is administering, or within the last two years has administered, such services for the party or attorney in another case. If they have performed these services, the disclosure must include:
    - The names of the parties;
    - If applicable, the name of the attorney in the current arbitration who is or was involved in the other case;
    - The type of dispute resolution services provided in the cases; and
    - If there was a decision rendered in the case, the date of the decision, the prevailing party, and the amount of damages awarded, if any.

Three bills introduced by the Legislature this year contain provisions that relate to some of the topics covered in 7(b)(12)'s disclosure requirements.

Assembly Bill 2574, which was signed by the Governor, prohibits a provider organization from administering a consumer arbitration if the provider organization has, or within the preceding year has had, a financial interest in any party or attorney for a party. The bill also prohibits a provider organization from administering a consumer arbitration, or providing any other services related to a consumer arbitration, if any party or attorney for a party has, or within the preceding year has had, any type of financial interest in the provider organization. Based on this new prohibition, staff recommends that standard 7(b)(12) (new standard 8) be revised to eliminate the obligation to disclose these interests. Staff does not believe it is appropriate to ask arbitrators to disclose the existence of interests that are prohibited by statute.

Assembly Bill 2656, which was also signed by the Governor, requires that provider organizations make available to the public on the Internet a computer-searchable database that contains the following information about the consumer cases in which they have provided dispute resolution services in the last five years:

- The name of the nonconsumer party;

- The type of dispute;

- Who was the prevailing party;

- The number of occasions on which the nonconsumer party was previously a party in an arbitration or a mediation administered by the provider;

- Whether the consumer party was represented by an attorney;

- The dates on which arbitration was demanded, the arbitrator was appointed, and the case was disposed of;

- The type of disposition;

- The amount of the claim, the amount of the award, and any other relief granted; and

- The name of the arbitrator and the arbitrator's fee.

Staff is not recommending any change to standard 7(b)(12) (new standard 8) in light of AB 2656. This database publication requirement differs from standard's requirement for disclosure of information about prior cases involving the party or attorney in the arbitration in several respects. First, the required database does not include some critical information that that is required to be disclosed under the standard, including information about nonconsumer cases involving a party in the current arbitration or information about the attorneys in the arbitration. Second, the database is a general list of all the consumer cases handled by the provider organization; it is not a specific list of the cases involving the same parties and attorneys in the current arbitration, as a disclosure would be. Finally, to the extent that the database does include information that must also be disclosed under the standard, the standard already provides that an arbitrator can fulfill his or her disclosure obligation by referring to information published on the Internet by the provider organization, so arbitrators can simply rely on this database where it is applicable in making required disclosures.

Assembly Bill 3029, which was vetoed by the Governor, would have required, among other things, that provider organizations directly disclose certain information to the parties in consumer arbitrations that they were administering, including:

- Any employment or consulting relationship with the parties or attorneys resulting in payment of $30,000 or more;

- Any financial relationship with the parties or attorneys; and

- Any solicitation by the provider organization of the parties or attorneys.

Because this bill was not enacted, staff is not recommending any related change to the standards.

Although staff is not recommending that standard 7(b)(12) [new standard 8] be deleted, in addition to the changes being recommended in response to the enactment of Assembly Bill 2574, staff recommends several amendments to promote the clarity of this provision, including:

- Breaking this provision out of standard 7 and making it a new, separate standard 8. This will make both standards shorter and therefore should make them easier to read and understand;

- Amending the heading and the introductory sentence to clarify, as suggested by Judge Philip M. Saeta, that this standard applies only in consumer arbitrations in which a provider organization is administering the arbitration services;

- Moving the general provisions to the beginning of the standard, so that they are easier to find and inform the reader's understanding of the rest of the standard;

- Restructuring the requirements to disclose case information in the same way as in subdivisions 7(b)(4) and (5) [renumbered (d)(4) and (5) in the proposed revision]; and

- Grouping together all of the provisions concerning case information so that these requirements are easier to find and follow.

Staff believes that, taken together, these changes should make this standard easier to read and understand and appropriately reduce arbitrators' disclosure obligations in light of recently enacted legislation.

Subdivision (b)(13) [renumbered (d)(13) in the proposed revision]
Subdivision (b)(13) requires arbitrators to disclose membership in any organization that practices invidious discrimination on the basis of race, sex, religion, national origin, or sexual orientation, with certain enumerated exceptions. This requirement is modeled on judicial arbitrators' disclosure obligation under canon 6(D)(2)(g) of the California Code of Judicial Ethics.[23]

We received only two comments related to this standard. Ms. Camp of the National Futures Association supports the standard. Mr. Owen suggested that the

[23] Canon 6D(2)(g) requires that temporary judges, referees, and court-appointed arbitrators, "in all proceedings, disclose in writing or on the record membership in any organization that practices invidious discrimination on the basis of race, sex, religion, national origin, or sexual orientation, except for membership in a religious or an official military organization of the United States and membership in a nonprofit youth organization, so long as membership does not violate Canon 4A [conduct of extrajudicial activities]."

exceptions for religious and military organizations are inappropriate. Panel member Mr. Madison has also echoed Mr. Owen's concern. However, in order to make these standards consistent with the standards for judicial arbitrators, staff believes it is appropriate to track the exceptions in the canon applicable to judicial arbitrators.

Subdivisions (b)(14) and (c) [renumbered (d)(14) and (e) in the proposed revision] Subdivision 7(b)(14) [renumbered (d)(14) in the proposed revision] is a catch-all provision that requires arbitrators to disclose any other matter that might cause a person aware of the facts to reasonably entertain a doubt that the arbitrator would be able to be impartial, that leads the proposed arbitrator to believe there is a substantial doubt as to his or her capacity to be impartial, or that otherwise leads the arbitrator to believe that his or her disqualification will further the interests of justice. This provision is based on an existing statutory disclosure obligation that applies to both contractual and judicial arbitrators under Code of Civil Procedure section 170.1(a)(6).[24]

Subdivision (c) [renumbered (e) in proposed revision] requires an arbitrator to disclose if he or she is unable to perceive the evidence or conduct the proceedings because of a permanent or temporary physical impairment and any constraint on his or her availability, known to the arbitrator, that will interfere with his or her ability to commence or complete the arbitration in a timely manner. The language of subdivision (c)(1) also tracks that of an existing disclosure obligation that applies to both contractual and judicial arbitrators under Code of Civil Procedure section 170.1(a)(7).[25] The language of subdivision (c)(2) is based on language in canon I of both the current AAA/ABA code and the 2001 proposed revisions to it.[26]

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[24] Code Civ. Proc., § 170.1(a)(6) establishes as a ground for disqualification of a judge that "for any reason (A) the judge believes his or her recusal would further the interests of justice, (B) the judge believes there is a substantial doubt as to his or her capacity to be impartial, or (C) a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial. Bias or prejudice towards a lawyer in the proceeding may be grounds for disqualification."

[25] Code Civ. Proc., § 170.1(a)(7) establishes as a ground for disqualification of a judge that "by reason of permanent or temporary physical impairment the judge is unable to properly conduct the proceeding."

[26] This canon provides, in relevant part: "Persons should accept appointment as arbitrators only if they believe that they can be available to conduct the arbitration promptly." In the 2001 proposed revision, this has been revised to state: "One should accept appointment as an arbitrator only if fully satisfied . . . (4) that he or she can be available to commence the arbitration in accordance with the requirements of the case and thereafter to give to it the time and attention to its completion that the parties are reasonably entitled to expect."

As discussed above, Mr. Owen suggested that these provisions be made additional grounds for declining appointment under standard 6, rather than matters for disclosure or disqualification. For the reasons set forth in the discussion of standard 6 above, staff does not recommend making that change.

Subdivision (d) [renumbered (b) in the proposed revision]
Subdivision 7(d) currently contains provisions (1) outlining arbitrator's duty of inquiry with regard to extended family relationships; (2) clarifying that the terms "cases" and "any arbitration" as used in this standard do not include collective bargaining cases or arbitrations; (3) clarifying the relationship between the disclosure obligations in this standard and the obligation to obtain party consent to certain future employment under standard 10(d); and (4) specifying the names of parties that need to be disclosed under this standard.

As noted above, the comments of Ms. Nelson and Ms. Callahan expressing concern about whether collective bargaining cases must be disclosed under standard 7 suggest that readers did not find subdivision 7(d) at the end of lengthy standard 7 and therefore did not read the disclosure requirements with these general provisions in mind. Staff therefore recommends that current subdivisions 7(d)(2) and (4) be moved to the front of standard 7 to make them easier for readers to find and thus help readers understand the standard. Also, as noted above, we recommend that standard 7(b)(4), (5) and (12) [renumbered 7(d)(4) and (5) and standard 8 in the proposed revision] be amended to clarify that only pending or prior non–collective bargaining cases are required to be disclosed.

We also received several comments concerning the relationship between 7(d)(1)'s "safe harbor" provision for inquiring about extended family members and both the general duty of inquiry and the duty to disclose. As discussed above under 7(b), staff recommends that this provision be moved to new standard 9 in order to clarify the relationship between this "safe harbor" and the general duty of inquiry.

Finally, both panel chair Professor Jay Folberg and Ms. Ruth Glick, President of the California Dispute Resolution Council, suggested that subdivision (d)(3)—which is intended to clarify the relationship between the disclosure obligations in this standard and the obligation to obtain party consent to certain future employment under standard 10(d)—is unclear. Staff recommends that this provision be amended to reflect the recommended deletion of standard 10(d). The revised provision would clarify that if an arbitrator has disclosed to the parties at the outset of the arbitration, as required by standard 10(b), that he or she will entertain offers of employment or professional relationships from a party or lawyer for a party while that arbitration is pending and the parties have not chosen to disqualify the arbitrator at that time, the arbitrator is not then also required to

make a disclosure to the parties in that arbitration when he or she subsequently receives or accepts such an offer.

Staff considered deleting this provision completely. However, if this provision were eliminated, under arbitrators' general continuing duty to disclose "any matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed arbitrator would be able to be impartial," the arbitrator would be required to make a new disclosure whenever he or she received or accepted an offer of employment from one of the parties or attorneys in the pending arbitration. If the arbitration had not yet reached the stage when disqualification is no longer available under Code of Civil Procedure section 1281.91, the arbitrator might then be subject to disqualification based on this disclosure. Staff concluded that these subsequent disclosures/disqualifications would essentially defeat the main purpose of having the initial disclosure/disqualification process under 10(b) and (c). As articulated in the April 2002 report to the council, both staff and the members of the panel of experts believed that the initial disclosure/disqualification approach best addresses concerns regarding the potential influence of "repeat players," those parties or attorneys who are repeated users of arbitration services and thus potential sources of additional cases for the arbitrator, without disrupting the arbitration process once under way. This procedure allows those parties who do not want an arbitrator who takes concurrent employment to select an acceptable arbitrator at the outset of the arbitration, thus avoiding the possibility that those parties could be faced with disqualifying the arbitrator in the middle of the arbitration for taking on new employment from a party or attorney. But if an arbitrator still has to make a disclosure when he or she receives or accepts an offer of employment, the potential disruptions in the pending arbitration are not avoided.

The recommended revision to 7(d)(3) combined with the recommended deletion of standard 10(d) would mean less protection for consumer parties from concerns about the potential influence of repeat players on arbitrators. Consumer parties would have only the one chance at the outset of the arbitration to decide whether to accept an arbitrator who takes offers of employment from the parties or attorneys; the parties would not be able to wait to see what types of offers were made before determining whether they were uncomfortable with the arbitrator taking those offers. Staff believes, however, that this initial disclosure/disqualification procedure offers sufficient protection without the risk of disrupting pending arbitrations. At the time the party has to make the initial disqualification decision, he or she will have received disclosures about any other arbitration or other dispute resolution services the arbitrator is providing or has provided to the parties or attorneys, so the party will be aware of the arbitrator's track record. If the party is at all uncomfortable with this track record or with the possibility of the arbitrator receiving additional employment from his or her

opponent in the arbitration while the arbitration is pending, the party will have the power to disqualify that arbitrator at the outset of the arbitration.

Subdivision (e) [renumbered (f) in the proposed revision]
Subdivision 7(e) clarifies that arbitrators' duty to inform themselves of and disclose matters described in subdivision (b) is a continuing obligation, remaining in force from notice of the arbitrator's proposed nomination or appointment until the conclusion of the arbitration.

A few commentators suggested that arbitrators' continuing duty under this standard to inform themselves about matters that must be disclosed is overly burdensome and unclear. In particular, it was noted that it is unclear how frequently an arbitrator would be required to re-check his or her relationships and affiliations under this standard. One commentator suggested that the standard specify the required frequency of these re-checks.

Based on these comments, staff recommends that the references to a continuing duty to inform oneself of matters to be disclosed be deleted from this standard. The ABA/AAA standards, like these standards, make the duty to *disclose* a continuing duty, so that the arbitrator makes new disclosures when new matters arise or when he or she becomes aware of something that was inadvertently omitted from a prior disclosure. However, the ABA/AAA standards and other sets of arbitrator ethics standards do not make the duty of *inquiry* a continuing duty. We believe that, in the interests of clarity and reducing burdens on arbitrators, it is appropriate to follow the model set in these other standards.

Subdivision (f) [renumbered (c) in the proposed revision]
Subdivision 7(f) lays out the time frames within which arbitrators are required to make their initial disclosures under Code of Civil section 1281.91. It also clarifies that matters discovered after the arbitrator's initial disclosure must be disclosed within 10 calendar days after the arbitrator becomes aware of the matter.

As discussed above, to help make standard 7 clearer, staff recommends that this provision be moved to the beginning of standard 7, becoming new subdivision (c). Staff also recommends that the reference to the time frame for disclosure under Code of Civil Procedure section 1281.9 be replaced with the statutory language so that readers do not have to look up the statute to understand this standard.

Proposed new Standard 8. Additional disclosures in consumer arbitrations administered by a provider organization
As discussed above, staff recommends that the provisions of current standard 7(b)(12) relating to additional disclosures in consumer arbitrations administered by a provider organization be moved to a new, separate standard 8. This will

create standards that are shorter, easier to read and easier to understand. The other changes to the text of this standard are discussed under 7(b)(12) above.

Proposed new Standard 9. Arbitrator's duty to inform themselves about matters to be disclosed
Also as discussed above, staff recommends that the provisions addressing arbitrators' general duty to inform themselves of matters that must be disclosed as provided in current standard 7(b) and the various "safe harbor" provisions indicating what constitutes a reasonable effort to become informed about various relationships sprinkled throughout current standard 7, all be moved out of standard 7 and consolidated into a new standard 9. General issues concerning arbitrators' duty to inform themselves of matters that must be disclosed are discussed above under standard 7(b).

Several commentators suggested that parties and/or attorneys should also have a duty to make disclosures. As already discussed, staff believes that the council does not have the authority to set standards for parties or attorneys. However, staff recommends addition of a "safe harbor" provision, similar to that already included in the standards for extended family relationships and for information about relationships with an administering provider organization, to address the difficulty arbitrators face in obtaining information about the associates of the lawyers who are representing the parties in the arbitration. Proposed new 9(c) would clarify what arbitrators must do to fulfill their duty of inquiry about relationships with such associates. Under this provision, an arbitrator could fulfill the duty to inform himself or herself of relationships with associates of an attorney in the arbitration by 1) providing the attorneys representing the parties in the arbitration with a list of such relationships that the arbitrator is aware of and asking the attorneys if they know of any additional relationships and 2) declaring in writing that he or she has made this required inquiry and attaching copies of the inquiry and any response from the parties' attorneys. The goal is to reduce the possibility that an arbitrator will be disqualified or that an award will be vacated for an arbitrator's inadvertent failure to disclose required information about a relationship with one of these associated attorneys.

Standard 8. Disqualification [renumbered standard 10 in the proposed revision]
Standard 8 addresses the circumstances under which an arbitrator is disqualified.

We received no comments suggesting changes to this standard, and none of the bills enacted this year affect it. However, to make this standard clearer and easier to understand, staff recommends that the references to the Code of Civil Procedure section 1281.9 be replaced with the relevant statutory language.

Standard 9. Duty to refuse gift, bequest, or favor [renumbered standard 11 in the proposed revision]

Standard 9 prohibits an arbitrator, while an arbitration is pending, from accepting a gift, bequest, favor, or honoraria from any person or entity whose interests are reasonably likely to come before the arbitrator in the arbitration. It also prohibits an arbitrator, from service of notice of appointment or appointment until two years after the conclusion of the arbitration, from accepting a gift, bequest, favor, or honoraria from any person or entity whose interests have come before the arbitrator in the arbitration. In addition, an arbitrator is required to discourage members of his or her household from accepting such gifts. This provision is modeled on the duty of judicial arbitrators to refuse gifts under canons 6(D)(2)(d)[27] and 6(D)(4) [28] of the California Code of Judicial Ethics.

We received only one comment on this standard. Ms. Glick, President of the California Dispute Resolution Council, suggested that the term "favor" is vague and recommended that it be defined or deleted from this standard. Panel member Mr. Madison made a similar suggestion. The term "favor" appears in the Code of Judicial Ethics provisions that apply both to judges and to judicial arbitrators. Although the code does not contain a definition of this term, the absence of a definition does not appear to have created problems in the application of the code. Staff believes it would be best for these arbitrator ethics standards to use language that is consistent with the standards applicable to judicial arbitrators and therefore does not recommend any amendment to this provision.

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[27] Canon 6(D)(2)(d) provides that a temporary judge, referee, or court-appointed arbitrator shall, from the time of notice and acceptance of appointment until termination of the appointment, "under no circumstance accept a gift, bequest, or favor if the donor is a party, person, or entity whose interests are reasonably likely to come before the temporary judge, referee, or court-appointed arbitrator. A temporary judge, referee, or court-appointed arbitrator shall discourage members of the judge's family residing in the judge's household from accepting benefits from parties who are reasonably likely to come before the temporary judge, referee, or court-appointed arbitrator."

[28] Canon 6D(4) provides: "From the time of appointment and continuing for two years after the case is no longer pending in any court, a temporary judge, referee or court-appointed arbitrator shall under no circumstances accept a gift, bequest, or favor from a party, person, or entity whose interests have come before the temporary judge, referee or court-appointed arbitrator in the matter. The temporary judge, referee or court-appointed arbitrator shall discourage family members residing in the household of the temporary judge, referee or court-appointed arbitrator from accepting any benefits from such parties, persons or entities during the time period stated in this subdivision. The demand for or receipt by a temporary judge, referee or court appointed arbitrator of a fee for his or her services rendered or to be rendered shall not be a violation of this Canon."

Standard 10. Duties and limitations regarding future professional relationships or employment [renumbered standard 12 in the proposed revision]
Standard 10 places restrictions on arbitrators entering into both concurrent and subsequent professional relationships or employment with parties or attorneys in an arbitration. It is intended to address concerns about the bias, or appearance of bias, that may flow from one side in an arbitration being a source or potential source of additional employment, and thus additional income, for the arbitrator.

Subdivision (a) completely prohibits arbitrators from entertaining offers or accepting employment or a professional relationship as an attorney, an expert witness, or a consultant for a party or attorney in the arbitration while that arbitration is pending. Subdivision (b) requires arbitrators to make an initial disclosure, at the time they are nominated or selected, regarding whether they will entertain offers of employment from a party or an attorney while an arbitration is pending. Parties are authorized to disqualify an arbitrator based on such a disclosure. Subdivision (c) provides that if an arbitrator either fails to make the disclosure required by (b) or states in such a disclosure that he or she will not entertain such offers of employment or professional relationships, the arbitrator is prohibited from entertaining or accepting any such offers while the arbitration is pending. Subdivision (d) provides that in consumer arbitrations, from the time of appointment until the conclusion of the arbitration, the arbitrator is prohibited from accepting any offers of employment or professional relationships from a party or attorney without the informed consent of all parties to the current arbitration. Subdivision (e) requires arbitrators to obtain party consent before entering into any professional relationship or accepting any employment either related to the arbitrated matter or in which information received by the arbitrator in confidence during the arbitration is material.

We received a few comments concerning subdivision 10(b). Ms. Camp, Mr. Owen, and COPRAC all suggested changes to this provision to improve its clarity. Ms. Camp suggested the arbitrator's duty should be to disclose if they will accept offers of employment from a party or attorney and that they should be prohibited from accepting such offers if they do not make this disclosure. Mr. Owen suggested moving the phrase "while that arbitration is pending" so that it is clearer which clause it is intended to modify. COPRAC suggested that this provision is confusing and that it would be preferable to simply require the parties in all arbitrations to consent to any new employment.

Staff recommends that the phrase "while that arbitration is pending" be moved as suggested by Mr. Owen. We also recommend, similar to Ms. Camp's suggestion, that arbitrators be required to make a disclosure only if they will entertain offers of employment while the arbitration is pending; no disclosure would be required if the arbitrator would not entertain such offers. As outlined below, we received

many comments objecting to the consent requirement in subdivision 10(d), so staff is not recommending, as suggested by COPRAC, that this approach replace the disclosure requirement in 10(b).

Numerous comments were received about subdivision (d) of this standard. Most of these commentators objected to the requirement that arbitrators in consumer arbitrations obtain the consent of the parties in the pending arbitration before accepting any offer of employment from a party or attorney. These commentators stated that trying to obtain such consent delays the process of selecting an arbitrator in these cases and interferes with the ability of the parties to get the arbitrator they want. These commentators suggested that the requirements for up-front disclosure about whether arbitrators will entertain offers of new employment during an arbitration and the parties' ability to disqualify arbitrators based upon such a disclosure are sufficient, and that arbitrators should not also be required to obtain parties' consent to take new matters.

Based on these comments, staff now believes that the potential burdens associated with 10(d)'s consent requirement outweigh its benefits. We are therefore recommending that this provision be deleted from the standard. Its deletion this provision will diminish protections for consumers somewhat, but staff believes that consumers' ability under 10(b) to disqualify any arbitrator who has a policy of taking new employment from a party or attorney while the arbitration is pending carries sufficient protection without the unintended side effects of delaying appointments in other cases. In addition, as noted by some panel members, 10(d)'s current consent procedure puts consumer parties in the awkward position of having to tell the arbitrator not to take new business. While there is some risk, with a closed arbitration panel, that consumers will find it difficult to find an arbitrator who is not willing to entertain new employment offers from parties while an arbitration is pending, if consumer parties consistently exercise their power to disqualify arbitrators who indicate they will entertain such offers, the panel will have to be expanded to include other arbitrators.

Standard 11. Conduct of proceeding [renumbered standard 13 in the proposed revision]

Standard 11 requires arbitrators to conduct arbitrations fairly, promptly, diligently, and in accordance with the applicable law relating to the conduct of arbitration proceedings. It also requires that, in making the decision, an arbitrator not be swayed by partisan interests, public clamor, or fear of criticism. These requirements are consistent with the obligations of judicial arbitrators under canon 6D of the California Code of Judicial Ethics.[29]

[29] Canon 6(D) makes other specified canons in the California Code of Judicial Ethics applicable to temporary judges, referees, and court-appointed arbitrators, including canon 3(B)(2), requiring

We received no comments suggesting changes to this standard, and none of the bills enacted this year affect it. Therefore, staff is not recommending any changes to this standard.

Standard 12. Ex parte communications [renumbered standard 14 in the proposed revision]
Standard 12 prohibits an arbitrator from engaging in ex parte communications except as permitted by the standard, applicable law, or the agreement of the parties. The standard is consistent with the obligations of judicial arbitrators under canon 6(D) of the California Code of Judicial Ethics.[30] The circumstances in which ex parte communication would be permitted under this standard are the same as the circumstances in which ex parte communication is permitted for judicial arbitrators under canons 6(D) and 3(B)(7) of the California Code of Judicial Ethics.

We received no comments suggesting changes to this standard, and none of the bills enacted this year affect it. Therefore, staff is not recommending any changes to this standard.

Standard 13. Confidentiality [renumbered standard 15 in the proposed revision]
Subdivision 13(a) prohibits arbitrators from using or disclosing information they received in confidence during an arbitration for personal gain. This is consistent with the obligations of judicial arbitrators under the California Code of Judicial Ethics.[31] Subdivision (b) prohibits an arbitrator from informing anyone of the

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a judge to be faithful to the law regardless of partisan interest, public clamor, or fear of criticism; canon 3(B)(7), requiring a judge to accord every person who has a legal interest in a proceeding full right to be heard according to law; and canon 3(B)(8), which requires that judges dispose of matters "fairly, promptly, and efficiently."

[30] Canon 6(D) makes other specified canons in the California Code of Judicial Ethics applicable to temporary judges, referees, and court-appointed arbitrators, including canon 3(B)(7), which states: "A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding, except as follows: (a) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond. . . (d) A judge may initiate ex parte communications, where circumstances require, for scheduling, administrative purposes, or emergencies that do not deal with substantive matters provided: (i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and (ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond."

[31] Canon 3(B)(11) of the Code of Judicial Ethics, which applies to judicial arbitrators under canon 6(D)(5), prohibits any disclosure or use of nonpublic information acquired in the arbitration for any purpose unrelated to arbitral duties.

award in advance of the time the award is given to all the parties. This is not an issue that is addressed in the standards applicable to judicial arbitrators, but this requirement is consistent with provisions in many sets of voluntary standards of conduct for arbitrators adopted by professional associations, including the AAA/ABA code.[32]

We received no comments suggesting changes to this standard, and none of the bills enacted this year affect. Therefore, staff is not recommending any changes to this standard.

Standard 14. Compensation [renumbered standard 16 in the proposed revision] Standard 14 prohibits an arbitrator from charging a fee that is in any way contingent on the outcome of the arbitration. It also requires the arbitrator to inform all parties in writing of the terms and conditions of the arbitrator's compensation before accepting appointment. This is not an issue that is addressed in the standards applicable to judicial arbitrators, since these arbitrators are not compensated by the parties. However, these requirements are consistent with provisions in many sets of voluntary standards of conduct for arbitrators adopted by professional associations, including the AAA/ABA code.[33]

We received no comments suggesting changes to this standard, and none of the bills enacted this year affect it. Therefore, staff is not recommending any changes to this standard.

Standard 15. Marketing [renumbered standard 17 in the proposed revision] Subdivision 15(a) requires arbitrators to be truthful and accurate in marketing their services and prohibits them from making any representations that imply favoritism or a specific outcome. It also makes clear that an arbitrator is responsible not only for his or her own marketing activities but also for those carried out on his or her behalf. Subdivision (b) prohibits arbitrators from soliciting business from a participant in the arbitration while the arbitration is pending. This is not an issue that is addressed in the standards applicable to judicial arbitrators. However, these requirements are consistent with provisions in many sets of voluntary standards of

[32] Canon VI of the AAA/ABA code provides, in relevant part: "It is not proper at any time for an arbitrator to inform anyone of the decision in advance of the time it is given to all parties."
[33] Canon VID of the AAA/ABA code provides, in relevant part: "It is preferable that before the arbitrator finally accepts appointment the basis of payment be established and that all parties be informed thereof in writing." The 2001 proposed revision of these standards provides, in relevant part "Neither the payment of an arbitrator's fee nor the amount thereof should be contingent upon the outcome of the arbitration."

conduct for arbitrators adopted by professional associations, including the AAA/ABA code.[34]

We received a comment from Mr. Cliff Palefsky recommending that this standard be broadened to prohibit any solicitation of cases at any time, not only while an arbitration is pending. Mr. Palefsky pointed out that the ABA/AAA standards prohibit all solicitation.

Staff is recommending that this standard not be modified at this time, but that this issue be considered at a later date. There are pending amendments to the ABA/AAA standards that would modify how those standards address the topic of solicitation. Staff believes that it would be prudent to wait to see what changes to the ABA/AAA standards are ultimately adopted.

Recommendation

Staff recommends that the Judicial Council:

1. Amend the ethics standards for neutral arbitrators in contractual arbitration contained in division VI of the appendix to the California Rules of Court, effective January 1, 2003, as set forth in the attachment to this report, to respond to public comment on the standards and recently enacted legislation;

2. Direct staff to transmit all of the public comments that raise concerns about statutory requirements or statutory language to the appropriate members of the Legislature; and

3. Direct staff to solicit comments on these standards after January 1, 2004, and report to the council on any recommended amendments to the standards.

[34] Canon VIII in the 2001 proposed revision to the AAA/ABA code provides, in relevant part: "An arbitrator may engage in advertising or promotion of arbitral services in a discreet and professional manner. Advertising or promotion of an individual's general willingness or availability to serve as an arbitrator should be limited to a brief description of his or her professional credentials, experience, and relevant areas of expertise or activities, and such information as may be required to facilitate contact and communication. Such advertising or promotion must not (a) be inaccurate or likely to mislead; (b) make comparison with other arbitrators or members of other professions; (c) include statements about the quality of the arbitrator's work or the success of the arbitrator's practice; or (d) imply any willingness to accept an appointment otherwise than in accordance with this Code. . . . It is inappropriate to contact parties or their representatives to solicit appointment as an arbitrator in a particular case."

Attachments:

(1) Roster of Blue Ribbon Panel of Experts on Arbitrator Ethics
(2) Proposed amendments to the Ethics Standards for Neutral Arbitrators in Contractual Arbitrations[35]
(3) Copies of legislation related to contractual arbitration enacted in 2002
(4) Comment chart

[35] Please note that we have attached two copies of the recommended amendments, a copy showing the recommended changes using strikeouts and underlining beginning on page 68 and a "clean" copy showing the standards with these changes incorporated beginning on page 106.

BLUE RIBBON PANEL OF EXPERTS ON ARBITRATOR ETHICS

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Mr. William B. Baker
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Mr. Kenneth C. Bryant
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Professor Erwin Chemerinsky
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Mr. Richard Chernick
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Hon. Julie M. Conger
Judge of the Superior Court of California,
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Mr. Michael A. Futterman
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Mr. Barry Goode
Secretary of Legal Affairs
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Ms. Gail Hillebrand
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Mr. Alan Wiener
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Administrative Office of the Courts
San Francisco

DIVISION VI. Ethics Standards for Neutral Arbitrators in Contractual Arbitration

Standard 1. Purpose, intent, and construction

(a) These standards are adopted under the authority of Code of Civil Procedure section 1281.85 and establish the minimum standards of conduct for neutral arbitrators who are subject to these standards. They are intended to guide the conduct of arbitrators, to inform and protect participants in arbitration, and to promote public confidence in the arbitration process.

(b) For arbitration to be effective there must be broad public confidence in the integrity and fairness of the process. Arbitrators are responsible to the parties, the other participants, and the public for conducting themselves in accordance with these standards so as to merit that confidence.

(c) These standards are to be construed and applied to further the purpose and intent expressed in subdivisions (a) and (b) and in conformance with all applicable law.

(d) These standards are not intended to affect any existing civil cause of action or create any new civil cause of action.

Comment to Standard 1

Code of Civil Procedure section 1281.85 provides that, beginning July 1, 2002, a person serving as a neutral arbitrator pursuant to an arbitration agreement shall comply with the ethics standards for arbitrators adopted by the Judicial Council pursuant to that section.

While the grounds for vacating an arbitration award are established by statute, not these standards, an arbitrator's violation of these standards may, under some circumstances, fall within one of those statutory grounds. (See Code Civ. Proc., § 1286.2.) A failure to disclose within the time required for disclosure a ground for disqualification of which the arbitrator was then aware is a ground for vacatur of the arbitrator's award. (See Code Civ. Proc., § 1286.2(a)(6)(A).) Violations of other obligations under these standards may also constitute grounds for vacating an arbitration award under section 1286.2(a)(3) if "the rights of the party were substantially prejudiced" by the violation.

While vacatur may be an available remedy for violation of these standards, these standards are not intended to affect any civil cause of action that may currently exist or create any new civil cause of action. These standards are also not intended to establish a ceiling on what is considered good practice in arbitration or to discourage efforts to educate arbitrators about best practices.

Standard 2. Definitions

As used in these standards:

(a) [Arbitrator and neutral arbitrator]

(1) "Arbitrator" and "neutral arbitrator" mean any arbitrator who is subject to these standards and who is to serve impartially, whether selected or appointed:

(A) Jointly by the parties or by the arbitrators selected by the parties;

(B) By the court, when the parties or the arbitrators selected by the parties fail to select an arbitrator who was to be selected jointly by them; or

(C) By a dispute resolution provider organization, under an agreement of the parties.~~; or~~

~~(D) By any party acting alone, if all parties agree in writing that the unilaterally appointed arbitrator is to serve impartially.~~

(2) Where the context includes events or acts occurring before an appointment is final, "arbitrator" and "neutral arbitrator" include a person who has been served with notice of a proposed nomination or appointment.

(b) "Applicable law" means constitutional provisions, statutes, decisional law, California Rules of Court, and other statewide rules or regulations that apply to arbitrators who are subject to these standards.

(c) "Conclusion of the arbitration" means the following:

(1) When the arbitrator is disqualified or withdraws or the case is settled or dismissed before the arbitrator mak~~ing~~es an award, the date on which the arbitrator's appointment is terminated;

(2) When the arbitrator makes an award and no party makes a timely application to the arbitrator to correct the award, the final date for making an application to the arbitrator for correction; or

(3) When a party makes a timely application to the arbitrator to correct the award, the date on which the arbitrator serves a corrected award or a denial on each party, or the date on which denial occurs by operation of law.

(d) "Consumer arbitration" means an arbitration conducted under a predispute arbitration provision contained in a contract that meets the criteria listed in paragraphs (1) through (3) below. "Consumer arbitration" excludes arbitration proceedings conducted under or arising out of public or private sector labor-relations laws, regulations, charter provisions, ordinances, statutes, or agreements.

(1) The contract is with a consumer party, as defined in these standards;

(2) The contract was drafted by or on behalf of the nonconsumer party; and

(3) The consumer party was required to accept the arbitration provision in the contract.

(e) "Consumer party" is a party to an arbitration agreement who, in the context of that arbitration agreement, is any of the following:

(1) An individual who seeks or acquires, including by lease, any goods or services primarily for personal, family, or household purposes including, but not limited to, financial services, insurance, and other goods and services as defined in section 1761 of the Civil Code;

(2) An individual who is an enrollee, a subscriber, or insured in a health-care service plan within the meaning of section 1345 of the Health and Safety Code or health-care insurance plan within the meaning of section 106 of the Insurance Code;

(3) An individual with a medical malpractice claim that is subject to the arbitration agreement; or

(4) An employee or an applicant for employment in a dispute arising out of or relating to the employee's employment or the applicant's prospective employment that is subject to the arbitration agreement.

(f) "Dispute resolution neutral" means a temporary judge appointed under article VI, section 21 of the California Constitution, a referee appointed under Code of Civil Procedure section 638 or 639, an arbitrator, a neutral evaluator, a special master, a mediator, a settlement officer, or a settlement facilitator.

(g) "Dispute resolution provider organization" and "provider organization" mean any nongovernmental entity that, or individual who, coordinates, administers, or provides the services of two or more dispute resolution neutrals. ~~"Provider organization" does not include a court.~~

(h) "Domestic partner" means a domestic partner as defined in Family Code section 297.

(i) "Financial interest" means a financial interest within the meaning of Code of Civil Procedure section 170.5.

(~~i~~j) "Gift" means a gift as defined in Code of Civil Procedure section 170.9(l).

(~~j~~k) "Honoraria" means honoraria as defined in Code of Civil Procedure section 170.9(h) and (i).

(~~k~~l) "Lawyer in the arbitration" means the lawyer hired to represent a party in the arbitration. ~~includes any lawyer present at the arbitration hearing or who is identified in any arbitration brief or other papers submitted to the arbitrator as representing a party for purposes of the arbitration~~.

(~~l~~m) "Lawyer for a party" ~~includes any~~ means the lawyer hired to represent~~ing~~ a party in the arbitration and any lawyer or law firm currently associated in the practice of law with ~~a~~ the lawyer hired to represent a party in the arbitration.

(~~m~~n) "Member of the arbitrator's immediate family" ~~includes~~ means the arbitrator's spouse or domestic partner ~~(as defined in Family Code section 297)~~ and ~~a~~any minor child living in the arbitrator's household.

(~~n~~o) "Member of the arbitrator's extended family" ~~includes~~ means the ~~members of the arbitrator's immediate family and the~~ parents, grandparents, great-grandparents, children, grandchildren, great-grandchildren, siblings, uncles, aunts, nephews, ~~or~~and nieces of the arbitrator or the arbitrator's spouse or domestic partner ~~(as defined in Family Code section 297)~~ or the spouse of such person.

(~~o~~p) [Party]

(1) "Party" means a party to the arbitration agreement:

(A) Who seeks to arbitrate a controversy pursuant to the agreement;

(B) Against whom such arbitration is sought; or

(C) Who is made a party to such arbitration by order of a court or the arbitrator upon such party's application, upon the application of any other party to the arbitration, or upon the arbitrator's own determination.

(2) "Party" includes the representative of a party, unless the context requires a different meaning.

(~~p~~q) "Party-arbitrator" means an arbitrator selected unilaterally by a party ~~and who is not expected to serve in an impartial manner~~.

(r) "Private practice of law" means private practice of law as defined in Code of Civil Procedure section 170.5.

(~~q~~s) "Significant personal relationship" includes a close personal friendship.

Comment to Standard 2

Subdivision (a). The definition of "arbitrator" and "neutral arbitrator" in this standard is intended to include all arbitrators who are to serve in a neutral and impartial manner and to exclude unilaterally selected arbitrators ~~who are to serve as advocates or in a partisan role~~.

Subdivisions (l) and (m). Arbitrators should take special care to note that two different terms are used in these standards to refer to lawyers who represent parties in the arbitration. In particular, arbitrators should note that the term "lawyer for a party" includes any lawyer or law firm currently associated in the practice of law with the lawyer hired to represent a party in the arbitration.

Subdivision (p)(2). While this provision generally permits an arbitrator to provide required information or notices to a party's attorney as that party's representative, a party's attorney should not be treated as a "party" for purposes of identifying matters that an arbitrator must disclose under standard 7 or 8, as those standards contain separate, specific requirements concerning the disclosure of relationships with a party's attorney.

Other terms that may be pertinent to these standards are defined in Code of Civil Procedure section 1280.

Standard 3. Application and effective date

(a) Except as otherwise provided in this standard and ~~subdivision (b)(12) of~~ standard ~~7~~8, these standards apply to all persons who are appointed to serve as neutral arbitrators on or after July 1, 2002, in any arbitration under an arbitration agreement, if:

(1) The arbitration agreement is subject to the provisions of title 9 of part III of the Code of Civil Procedure (commencing with section 1280); or

(2) The arbitration hearing is to be conducted in California.

(b) These standards do not apply to:

(1) Party arbitrators, as defined in these standards; or

(2) Any arbitrator ~~acting~~ serving in:

(A) An international arbitration proceeding subject to the provisions of title 9.3 of part III of the Code of Civil Procedure;

(B) A judicial arbitration proceeding subject to the provisions of chapter 2.5 of title 3 of part III of the Code of Civil Procedure;

(C) An attorney-client fee arbitration proceeding subject to the provisions of article 13 of chapter 4 of division 3 of the Business and Professions Code;

(D) An automobile warranty dispute resolution process certified under California Code of Regulations title 16, division 33.1;

(E) An arbitration of a workers' compensation dispute under Labor Code sections 5270 through 5277;

(F) An arbitration conducted by the Workers' Compensation Appeals Board under Labor Code section 5308;

(G) An arbitration of a complaint filed against a contractor with the Contractors State License Board under Business and Professions Code sections 7085 through 7085.7; or

(H) An arbitration conducted under or arising out of public or private sector labor-relations laws, regulations, charter provisions, ordinances, statutes, or agreements.

(c) Persons who are serving in arbitrations in which they were appointed to serve as arbitrators before July 1, 2002, are not subject to these standards in those arbitrations. Persons who are serving in arbitrations in which they were appointed to serve as arbitrators before January 1, 2003, are not subject to ~~subdivision (b)(12) of~~ standard ~~7~~8 in those arbitrations.

Comment to Standard 3

With the exception of ~~subdivision (b)(12) of~~ standard ~~7~~8, these standards apply to all neutral arbitrators appointed on or after July 1, 2002, who meet the criteria of subdivision (a) ~~and who are to serve impartially, even arbitrators appointed unilaterally by one party~~. Arbitration provider organizations, although not themselves subject to these standards, should be aware of them when performing administrative functions that involve arbitrators who are subject to these standards. A provider organization's policies and actions should facilitate, not impede, compliance with the standards by arbitrators who are affiliated with the provider organization.

Standard 4. Duration of duty

(a) Except as otherwise provided in these standards, an arbitrator must comply with these ethics standards from acceptance of appointment until the conclusion of the arbitration.

(b) If, after the conclusion of the arbitration, a case is referred back to the arbitrator for reconsideration or rehearing, the arbitrator must comply with these ethics standards from the date the case is referred back to the arbitrator until the arbitration is again concluded.

Standard 5. General duty

An arbitrator must act in a manner that upholds the integrity and fairness of the arbitration process. He or she must maintain impartiality toward all participants in the arbitration at all times.

Comment to Standard 5

This standard establishes the overarching ethical duty of arbitrators. The remaining standards should be construed as establishing specific requirements that implement this overarching duty in particular situations.

Maintaining impartiality toward all participants during all stages of the arbitration is central to upholding the integrity and fairness of the arbitration. An arbitrator must perform his or her duties impartially, without bias or prejudice, and must not, in performing these duties, by words or conduct manifest partiality, bias, or prejudice, including but not limited to partiality, bias, or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, socioeconomic status, or the fact that a party might select the arbitrator to serve as an arbitrator in additional cases. After accepting appointment, an arbitrator should avoid entering into any relationship or acquiring any interest that might reasonably create the appearance of partiality, bias, or prejudice. An arbitrator does not become partial, biased, or prejudiced simply by having acquired knowledge of the parties, the issues or arguments, or the applicable law.

Standard 6. Duty to refuse appointment

Notwithstanding any contrary request, consent, or waiver by the parties, a proposed arbitrator must decline appointment if he or she is not able to be impartial.

Standard 7. Disclosure

(a) **[Intent]** This standard is intended to identify the matters that must be disclosed by a person nominated or appointed as an arbitrator. To the extent that this standard addresses matters that are also addressed by

statute, it is intended to include those statutory disclosure requirements, not to eliminate, reduce, or otherwise limit them.

(~~d~~b) [General provisions] For purposes of this standard:

(~~2~~1) (*Collective bargaining cases excluded*) The terms "cases" and "any arbitration" do not include collective bargaining cases or arbitrations conducted under or arising out of collective bargaining agreements between employers and employees or between their respective representatives.

(~~3~~2) (*Offers of employment or professional relationship*) If ~~A~~an arbitrator has disclosed to the parties in an arbitration that he or she will entertain ~~is not required to disclose an~~ offers of employment or of professional relationships from a party or lawyer for a party while the arbitration is pending ~~in the arbitration or a lawyer or law firm that is currently associated in the private practice of law with a lawyer in the arbitration if the arbitrator has informed the parties about the offer and has sought their consent~~ as required by subdivision (~~d~~b) of standard 12~~0~~, the arbitrator is not required to disclose to the parties in that arbitration any such offer from a party or lawyer for a party that he or she subsequently receives or accepts while that arbitration is pending.

(~~4~~3) (*Names of parties in cases*) When ~~information, including names of parties, is disclosed about a case~~ an arbitrator makes disclosures about other pending or prior cases, in order to preserve confidentiality, it is sufficient to give the name of any party who is not a party to the pending arbitration as "claimant" or "respondent" if the party is an individual and not a business or corporate entity.

(~~f~~c) [Time and manner of disclosure] ~~Within the time specified in Code of Civil Procedure section 1281.9(b)~~Within 10 calendar days of service of notice of the proposed nomination or appointment, a proposed ~~neutral~~ arbitrator must disclose to all parties in writing all matters listed in subdivisions (~~b~~d) and (~~c~~e) of this standard of which the arbitrator is then aware. ~~Except for matters described in subdivision (b)(12) of this standard,~~ ~~i~~If an arbitrator subsequently becomes aware of a matter that must be disclosed under either subdivision (~~b~~d) and (~~c~~e) of this standard, the arbitrator must disclose that matter to the parties ~~as soon as practicable, but in no event more than~~ in writing within 10 calendar days after the arbitrator becomes aware of the matter.

MOVED DUTY OF INQUIRY TO NEW STANDARD 9

(~~b~~d) [Required disclosures] A person who is nominated or appointed as an arbitrator must disclose all ~~make a reasonable effort to inform himself or herself of any~~ matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed arbitrator would be able to be impartial, including all of the following ~~and must disclose *all such matters* to the parties. Matters that must be disclosed include~~:

(1) (*Family relationships with party*) The arbitrator or a member of the arbitrator's immediate or extended family is a party, a party's spouse or domestic partner, or an officer, director, or trustee of a party.

(2) (*Family relationships with lawyer in the arbitration*) The arbitrator, ~~a member of the arbitrator's extended family,~~ or the ~~arbitrator's~~ spouse, former spouse, domestic partner, child, sibling, or parent of the arbitrator or the arbitrator's spouse or domestic partner is:

(A) A lawyer in the arbitration~~. For purposes of this paragraph only, "lawyer in the arbitration" includes a person who has served as a lawyer for or as an officer of a public agency and who personally advised or in any way represented the public agency concerning the factual or legal issues in the arbitration~~; **MOVED to 7(d)(7)**

(B) The spouse or domestic partner of a lawyer in the arbitration; or

(C) Currently associated in the private practice of law with a lawyer in the arbitration.

(3) (*Significant personal relationship with ~~lawyer or~~ party or lawyer for a party*) The arbitrator or a member of the arbitrator's immediate family has or has had a significant personal relationship with any party or ~~a~~ lawyer for a party.

(4) (*Service as arbitrator for a party or lawyer for party*)

(A) The arbitrator is serving or, within the preceding five years, has served:

(~~A~~i) As a neutral arbitrator in another ~~arbitration~~ prior or pending noncollective bargaining case involving a party to the current arbitration or a lawyer for a party; ~~if the arbitrator is serving or has served in this capacity, he or she must disclose the information required by Code of Civil Procedure section 1281.9(a)(4).~~

(~~B~~ii) As a party-appointed arbitrator in another ~~arbitration~~ prior or pending noncollective bargaining case for either a party to the current arbitration or a lawyer for a party;~~,~~ ~~or if the arbitrator is serving or has served in this capacity, he or she must disclose the information required by Code of Civil Procedure section 1281.9(a)(3).~~

(~~C~~iii) As a neutral arbitrator in another ~~arbitration~~ prior or pending noncollective bargaining case in which he or she was selected by a person serving as a party-appointed arbitrator in the current arbitration. ~~If the arbitrator is serving or has served in this capacity, he or she must disclose the information required by Code of Civil Procedure section 1281.9(a)(4).~~

(B) [Case information] If the arbitrator is serving or has served in any of the capacities listed under (A), he or she must disclose:

(i) The names of the parties in each prior or pending case and, where applicable, the name of the attorney representing the party in the current arbitration who is involved in the pending case, who was involved in the prior case, or whose current associate is involved in the pending case or was involved in the prior case.

(ii) The results of each prior case arbitrated to conclusion, including the date of the arbitration award, identification of the prevailing party, the amount of monetary damages awarded, if any, and the names of the parties' attorneys.

(C) [Summary of case information] ~~In addition, i~~If the ~~combined~~ total number of the cases disclosed under (A)~~, (B), and (C)~~ is greater than five, the arbitrator must provide a summary of those cases that states:

(i) ~~t~~The ~~total~~ number of pending cases in which the arbitrator is currently serving ~~served~~ in each capacity~~,~~:

(ii) The number of prior cases in which the arbitrator previously served in each capacity;

(iii) The number of prior cases arbitrated to conclusion; and

(iv) T~~t~~he number of such prior cases in which the party to the current arbitration, ~~or~~ the party represented by the lawyer for a party in the current arbitration, or the party represented by the party-arbitrator in the current arbitration was the prevailing party.

(5) (*Compensated service as other dispute resolution neutral*) The arbitrator is serving or has served as a dispute resolution neutral other than an arbitrator in another pending or prior noncollective bargaining case involving a party or lawyer for a party ~~in the current arbitration or a lawyer who is currently associated in the private practice of law with a lawyer in the arbitration~~ and the arbitrator has received or expects to receive any form of compensation for serving in this capacity.

(A) [Time frame] For purposes of ~~subdivision (b)~~ this paragraph (5), "prior case" means any case in which the arbitrator concluded his or her service as a dispute resolution neutral within two years ~~prior to~~ before the date of the arbitrator's proposed nomination or appointment, but does not include any case in which the arbitrator concluded his or her service before January 1, 2002.

(B) [~~Information about cases involving payment~~ Case information] If the arbitrator ~~was or will be paid for serving in such a capacity~~ is serving or has served in any of the capacities listed under this paragraph (5), he or she must disclose:

(i) The names of the parties in each prior or pending case and, where applicable, the name of the attorney in the current arbitration who is involved in the pending case, who was involved in the prior case, or whose current associate is involved in the pending case or was involved in the prior case;~~The number of pending and prior cases in which he or she was or will be paid for serving in each capacity for each party, lawyer in the arbitration, or other lawyer currently associated in the private practice of law with a lawyer in the arbitration; and~~

(ii) The dispute resolution neutral capacity (mediator, referee, etc.) in which the arbitrator is serving or served in the case; and

(iii) In each such case in which the arbitrator rendered a decision as a temporary judge or referee, the date of the decision, the prevailing party, ~~the names of the parties' attorneys, and~~ the amount of monetary damages awarded, if any, and the names of the parties' attorneys.

(C) [Summary of case information] If the total number of ~~the~~ cases disclosed under this paragraph (5) is greater than five, the arbitrator must also provide a summary of these cases that states:

(i) The number of pending cases in which the arbitrator is currently serving in each capacity;

(ii) The number of prior cases in which the arbitrator previously served in each capacity;

(iii) ~~t~~The number of prior cases in which the arbitrator rendered a decision as a temporary judge or referee; and

(iv) ~~t~~The number of such prior cases in which the party to the current arbitration or the party represented by the lawyer for a party in the current arbitration was the prevailing party.

MOVED TO NEW STANDARD 9

~~(D) [Services commenced prior to July 1, 2002] An arbitrator will be deemed to have complied with this requirement with respect to any such services commenced prior to July 1, 2002, if the arbitrator declares in writing that he or she has requested the required information from any dispute resolution provider organization administering those prior services and has disclosed all required information pertaining to those services within his or her knowledge.~~

(6) (*Current arrangements for prospective neutral service*) Whether the arbitrator has any current arrangement with a party concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in or, within the last two years, has participated in discussions regarding such prospective employment or service with a party.

(~~6~~7) (*Attorney-client relationships*) Any attorney-client relationship the arbitrator has or has had with a party or lawyer for a party. Attorney-client relationships include the following:

(A) ~~A party or a~~An officer, a director, or a trustee of a party is or, within the preceding two years, was a client of the arbitrator in the arbitrator's private practice of law or a client of a lawyer with whom the arbitrator is or was associated in the private practice of law;

~~(B) A lawyer for a party is or, within the preceding two years, was a client of the arbitrator in the arbitrator's private practice of law; and~~

(~~C~~B) In any other proceeding involving the same issues, the arbitrator gave advice to a party or a lawyer in the arbitration concerning any matter involved in the arbitration~~.~~; and

(C) The arbitrator served as a lawyer for or as an officer of a public agency that is a party and personally advised or in any way represented the public agency concerning the factual or legal issues in the arbitration.

(~~7~~8) (*Other professional relationships*) Any other professional relationship not already disclosed under paragraphs (2)–(7) that the

arbitrator or a member of the arbitrator's immediate family has or has had with a party or lawyer for a party. Professional relationships include the following:

(A) The arbitrator was associated in the private practice of law with a lawyer in the arbitration within the last two years;

(~~A~~B) The arbitrator or a member of the arbitrator's immediate family is or, within the preceding two years, was an employee of or an expert witness or a consultant for a party; and

(~~B~~C) The arbitrator or a member of the arbitrator's immediate family is or, within the preceding two years, was an employee of or an expert witness or a consultant for a lawyer in the arbitration~~; and~~.

~~(C) The arbitrator is, or, within the preceding two years, was associated in the private practice of law with a lawyer in the arbitration.~~

(~~8~~9) (*Financial interests in party*) The arbitrator or a member of the arbitrator's immediate family has a financial interest in a party.

(~~9~~10)(*Financial interests in subject of arbitration*) The arbitrator or a member of the arbitrator's immediate family has a financial interest in the subject matter of the arbitration.

(~~10~~11)(*Affected interest*) The arbitrator or a member of the arbitrator's immediate family has an interest that could be substantially affected by the outcome of the arbitration.

(~~11~~12)(*Knowledge of disputed facts*) The arbitrator or a member of the arbitrator's immediate or extended family has personal knowledge of disputed evidentiary facts relevant to the arbitration. A person who is likely to be a material witness in the proceeding is deemed to have personal knowledge of disputed evidentiary facts concerning the proceeding.

MOVED TO NEW STANDARD 8

~~(12) (*Information about provider organization in consumer arbitrations*) In a consumer arbitration as defined in standard 2 in which the arbitrator was appointed on or after January 1, 2003, any significant past, present, or currently expected financial or~~

~~professional relationship or affiliation between that dispute resolution provider organization and a party or lawyer in the arbitration.~~:

~~(A) [Provider organization and party or lawyer in arbitration]~~ ~~Information about the relationships or affiliations between the dispute resolution provider organization and a party or lawyer in the arbitration that must be disclosed under this paragraph include:~~

~~(i) The provider organization has a financial interest in a party.~~

~~(ii) A party, a lawyer in the arbitration, or a law firm with which a lawyer in the arbitration is currently affiliated is a member of or has a financial interest in the provider organization.~~

~~(iii) Within the preceding two years the provider organization has received a gift, bequest, or favor from a party, a lawyer in the arbitration, or a law firm with which a lawyer in the arbitration is currently affiliated.~~

~~(iv) The provider organization has entered into, or the arbitrator currently expects that the provider organization will enter into, an agreement or relationship with any party or lawyer in the current arbitration or a law firm with which a lawyer in the current arbitration is currently affiliated under which the provider organization will administer, coordinate, or provide dispute resolution services in other matters or will provide other consulting services for that party, lawyer, or law firm.~~

~~(v) The provider organization is coordinating, administering, or providing dispute resolution services or has coordinated, administered, or provided such services in another pending or prior case in which a party or lawyer in the current arbitration was a party or a lawyer.~~

~~(B) [Provider organization and arbitrator]. If a relationship or affiliation is disclosed under paragraph (12), the arbitrator must also provide information about the following:~~

~~(i) Any financial relationship or affiliation the arbitrator has with the provider organization other than receiving referrals of cases;~~

~~(ii) The provider organization's process and criteria for recruiting, screening, and training the panel of arbitrators from which the arbitrator in this case is to be selected;~~

~~(iii) The provider organization's process for identifying, recommending, and selecting potential arbitrators for specific cases; and~~

~~(iv) Any role the provider organization plays in ruling on requests for disqualification of the arbitrator.~~

~~(C) [Prior case, time frame]. For purposes of paragraph (A)(v), "prior case" means a case in which the dispute resolution neutral affiliated with the provider organization concluded his or her service within the two years before the date of the arbitrator's proposed nomination or appointment, but does not include any case in which the dispute resolution neutral concluded his or her service before July 1, 2002.~~

~~(D) [Case information]. If the provider organization is acting or has acted in any of the capacities described in paragraph (A)(v), the arbitrator must disclose the number of pending and prior cases involving each party or lawyer in the arbitration in which the provider organization is acting or has acted in such capacity. The arbitrator must also disclose the date of the decision, the prevailing party, the names of the parties' attorneys, and the amount of monetary damages awarded, if any, in each such prior case in which a dispute resolution neutral affiliated with the provider organization rendered a decision as an arbitrator, a temporary judge appointed under article VI, § 4 of the California Constitution, or a referee appointed under Code of Civil Procedure sections 638 or 639.~~

~~(E) [Summary information about cases] If the total number of cases disclosed under paragraph (D) is greater than five, the arbitrator must also provide a summary that states the number of such prior cases in which a neutral affiliated with the provider organization rendered a decision as an arbitrator, a temporary judge, or a referee in which the party to the current arbitration or the party represented by the lawyer in the current arbitration was the prevailing party.~~

~~(F) [Reliance on information provided by provider organization]. Except as to the information in (B)(i), an arbitrator may rely on information supplied by the provider organization in making the disclosures required by subdivisions (b)(12)(A) and (B) of this standard. If the information that must be disclosed is available on the Internet, the arbitrator may comply with the obligation to disclose this information by providing the Internet address at which the information is located and notifying the party that the arbitrator will supply hard copies of this information upon request.~~ **MOVED TO NEW STANDARD 9** ~~An arbitrator will be deemed to have complied with the obligation to inform himself or herself of and to disclose the information required by subdivisions (b)(12)(A) and (B) of this standard if the arbitrator:~~

~~(i) Provides a written declaration stating that he or she has asked the dispute resolution provider organization for this information and identifying any category of information that the arbitrator was not able to obtain from the provider organization; and~~

~~(ii) Has disclosed all the information within his or her knowledge pertaining to the relationships between the provider organization and the parties and lawyers in the arbitration.~~

~~(G) [Reliance on representation that not a consumer arbitration] An arbitrator is not required to make the disclosures required by subdivision (b)(12) if he or she reasonably believes that the arbitration is not a consumer arbitration based on reasonable reliance on a consumer party's representation that the arbitration is not a consumer arbitration.~~

~~(H)[Effective date] The provisions of subdivision (b)(12) of this standard take effect on January 1, 2003. Persons who are serving in arbitrations in which they were appointed to serve as arbitrators before January 1, 2003, are not subject to subdivision (b)(12) in those pending arbitrations.~~

(13) (*Membership in organizations practicing discrimination*). The arbitrator's membership in any organization that practices invidious discrimination on the basis of race, sex, religion, national origin, or sexual orientation. Membership in a religious organization, an official military organization of the United States, or a nonprofit youth organization need not be disclosed unless it would interfere with the arbitrator's proper conduct of the proceeding or would cause a person aware of the fact to reasonably entertain a doubt concerning the arbitrator's ability to act impartially.

(14) Any other matter that:

(A) Might cause a person aware of the facts to reasonably entertain a doubt that the arbitrator would be able to be impartial;

(B) Leads the proposed arbitrator to believe there is a substantial doubt as to his or her capacity to be impartial, including, but not limited to, bias or prejudice toward a party, lawyer, or law firm in the arbitration; or

(C) Otherwise leads the arbitrator to believe that his or her disqualification will further the interests of justice.

(~~c~~e) [Inability to conduct or timely complete proceedings] In addition to the matters that must be disclosed under subdivision (~~b~~d), an arbitrator must also disclose:

(1) If the arbitrator is not able to properly perceive the evidence or properly conduct the proceedings because of a permanent or temporary physical impairment; and

(2) Any constraints on his or her availability known to the arbitrator that will interfere with his or her ability to commence or complete the arbitration in a timely manner.

MOVED TO SUBDIVISION (b)

~~**(d) [General provisions]** For purposes of this standard:~~

MOVED TO NEW STANDARD 9

~~(1) (*Obligation regarding extended family relationships*) An arbitrator will be deemed to have complied with the obligation to inform himself or herself of and to disclose relationships involving his or her extended family and former spouse if the arbitrator (i) declares in writing that he or she has sought information about these relationships from the members of his or her immediate family and any members of his or her extended family living in his or her household and (ii) has disclosed all the information pertaining to these relationships within his or her knowledge.~~

MOVED TO SUBDIVISION (b)

~~(2) (*Collective bargaining cases excluded*) The terms "cases" and "any arbitration" do not include collective bargaining cases or arbitrations conducted under or arising out of collective bargaining agreements between employers and employees or between their respective representatives.~~

~~(3) (*Offers of employment or professional relationship*) An arbitrator is not required to disclose an offer of employment or professional relationship from a party or lawyer in the arbitration or a lawyer or law firm that is currently associated in the private practice of law with a lawyer in the arbitration if the arbitrator has informed the parties about the offer and has sought their consent as required by subdivision (d) of standard 10.~~

~~(4) (*Names of parties in cases*) When information, including names of parties, is disclosed about a case, in order to preserve confidentiality, it is sufficient to give the name of any party who is not a party to the pending arbitration as "claimant" or "respondent" if the party is an individual and not a business or corporate entity.~~

(e<u>f</u>) [Continuing duty] An arbitrator's duty to ~~inform himself or herself of and~~ disclose the matters described in subdivisions (~~b~~<u>d</u>) and (~~c~~<u>e</u>) of this standard~~, except those matters described in subdivision (b<u>c</u>)(12<u>13</u>) of this standard,~~ is a continuing duty, applying from service of the notice of the arbitrator's proposed nomination or appointment until the conclusion of the arbitration proceeding. ~~With regard to matters enumerated in subdivision (b<u>c</u>)(12<u>13</u>) of this standard, after making the initial disclosure required by subdivision (f) of this standard in an~~

~~arbitration, an arbitrator does not have a continuing duty to inform himself or herself of or to disclose these matters in that arbitration.~~

MOVED TO SUBDIVISION (c)

~~**(f) [Time of disclosure]** Within the time specified in Code of Civil Procedure section 1281.9(b), a proposed neutral arbitrator must disclose all matters in subdivisions (b) and (c) of this standard of which the arbitrator is then aware. Except for matters described in subdivision (b)(12) of this standard, if an arbitrator subsequently becomes aware of a matter that must be disclosed under either subdivision (b) and (c) of this standard, the arbitrator must disclose that matter to the parties as soon as practicable, but in no event more than 10 calendar days after the arbitrator becomes aware of the matter.~~

Comment to Standard 7

This standard requires arbitrators to disclose to all parties, in writing within 10 days of service of notice of their proposed nomination or appointment, all matters they are aware of at that time that could cause a person aware of the facts to reasonably entertain a doubt that the proposed arbitrator would be able to be impartial, and to disclose any additional such matters within 10 days of becoming aware of them.

Timely disclosure to the parties is the primary means of ensuring the impartiality of an ~~neutral~~ arbitrator. It provides the parties with the necessary information to make an informed selection of an ~~neutral~~ arbitrator by disqualifying or ratifying the proposed arbitrator following disclosure. See also standard 10, concerning disclosure and disqualification requirements relating to concurrent and subsequent employment or professional relationships between an arbitrator and a party or attorney in the arbitration. A party may disqualify an arbitrator for failure to comply with statutory disclosure obligations (see Code Civ. Proc., § 1281.91(a)). Failure to disclose, within the time required for disclosure, a ground for disqualification of which the arbitrator was then aware is a ground for vacatur of the arbitrator's award (see Code Civ. Proc., § 1286.2(a)(6)(A)).

The ~~neutral~~ arbitrator's overarching duty under this standard, which mirrors the duty set forth in Code of Civil Procedure section 1281.9, is to inform parties about matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed ~~neutral~~ arbitrator would be able to be impartial. While the remaining subparagraphs of (~~b~~d) require the disclosure of specific interests, relationships, or affiliations, these are only examples of common matters that could cause a person aware of the facts to reasonably entertain a doubt that the arbitrator would be able to be impartial. The absence of the particular interests,

relationships, or affiliations listed in the subparagraphs does not necessarily mean that there is no matter that could reasonably raise a question about the arbitrator's ability to be impartial and that therefore must be disclosed. An arbitrator must make determinations concerning disclosure on a case-by-case basis, applying the general criteria for disclosure under paragraph (~~b~~d)).

Code of Civil Procedure section 1281.85 specifically requires that the ethical standards adopted by the Judicial Council address the disclosure of interests, relationships, or affiliations that may constitute conflicts of interest, including prior service as an arbitrator or other dispute resolution neutral entity. Section 1281.85 further provides that the standards "shall be consistent with the standards established for arbitrators in the judicial arbitration program and may expand but may not limit the disclosure and disqualification requirements established by this chapter [chapter 2 of title 9 of part III, Code of Civil Procedure, sections 1281–1281.95]."

Code of Civil Procedure section 1281.9 already establishes detailed requirements concerning disclosures by arbitrators, including a specific requirement that arbitrators disclose the existence of any ground specified in Code of Civil Procedure section 170.1 for disqualification of a judge. This standard does not eliminate or otherwise limit those requirements; in large part, it simply consolidates and integrates those existing statutory disclosure requirements by topic area. This standard does, however, expand upon or clarify the existing statutory disclosure requirements in the following ways:

Moved to Standard 9 Comment
~~? Expanding the existing duty of reasonable inquiry that applies with respect to financial interests under Code of Civil Procedure section 170.1(a)(3), to require arbitrators to make a reasonable effort to inform themselves about all matters that must be disclosed (subdivision (b)). The standards also clarify what constitutes a reasonable effort by an arbitrator to inform himself or herself about relationships of his or her extended family.~~

~~?~~ Requiring arbitrators to disclose to the parties ~~as soon as practicable after its discovery~~ any matter about which they become aware after the time for making an initial disclosure has expired~~, but in no event more than~~ within 10 calendar days after the arbitrator becomes aware of the matter (subdivision (~~f~~c)).

~~?~~ Expanding required disclosures about the relationships or affiliations of an arbitrator's family members to include those of an arbitrator's domestic partner (subdivisions (~~b~~d)(1) and (2); see also definitions of immediate and extended family in standard 2).

? Requiring arbitrators, in addition to making statutorily required disclosures regarding prior service as an arbitrator for a party or attorney for a party, to disclose prior services both as neutral arbitrator selected by a party arbitrator in the current arbitration and as any other type of dispute resolution neutral for a party or attorney in the arbitration (e.g., temporary judge, mediator, or referee) (subdivisions (~~b~~d)(4)(C) and (5)).

? Requiring the arbitrator to disclose if he or she or a member of his or her immediate family is or was an employee, expert witness, or consultant for a party or a lawyer in the arbitration (subdivisions (~~b~~d)(7)(A) and (B)).

? Requiring the arbitrator to disclose if he or she or a member of his or her immediate family has an interest that could be substantially affected by the outcome of the arbitration (subdivision (~~b~~d)(10)).

Moved to Standard 8 Comment

~~? In consumer arbitrations, requiring arbitrators to disclose their relationship with the dispute resolution provider organization that is administering the arbitration and any financial or professional relationship between the provider organization and any party, attorney, or law firm in the arbitration (subdivision (b)(12)).~~

If a disclosure includes information about five or more cases, requiring arbitrators to provide a summary of that information (subdivisions (~~b~~d)(4) and~~,~~ (5)~~, and (12)~~.

? Requiring arbitrators to disclose membership in organizations that practice invidious discrimination on the basis of race, sex, religion, national origin, or sexual orientation (subdivision (~~b~~d)(13)).

? Requiring the arbitrator to disclose any constraints on his or her availability known to the arbitrator that will interfere with his or her ability to commence or complete the arbitration in a timely manner (subdivision (~~e~~e)).

? Clarifying that the duty to make disclosures is a continuing obligation, requiring disclosure of matters that were not known at the time of nomination or appointment but that become known afterward (subdivision (~~e~~f)).

Moved up to beginning of comment

~~? Requiring arbitrators to disclose to the parties as soon as practicable after its discovery any matter about which they become aware after the time for making an initial disclosure has expired, but in no event more than 10 calendar days after the arbitrator becomes aware of the matter (subdivision (f)).~~

Moved to Standard 8 Comment

~~Subdivision (b). Currently expected relationships or affiliations that must be disclosed include all relationships or affiliations that the arbitrator, at the time the disclosure is made, expects will be formed. For example, if the arbitrator knows that the administering provider organization has agreed in concept to enter into a business relationship with a party, but they have not yet signed a written agreement formalizing that relationship, this would be a "currently expected" relationship that the arbitrator would be required to disclose.~~

It is good practice for an arbitrator to ask each participant to make an effort to disclose any matters that may affect the arbitrator's ability to be impartial.

Standard 8. Additional disclosures in consumer arbitrations administered by a provider organization

(~~F~~a) [General provisions]

(1) *(Reliance on information provided by provider organization).* Except as to the information in (~~B~~c)(~~i~~1), an arbitrator may rely on information supplied by the administering provider organization in making the disclosures required by ~~subdivisions (b)(12)(A) and (B) of~~ this standard. If the information that must be disclosed is available on the Internet, the arbitrator may comply with the obligation to disclose this information by providing the Internet address at which the information is located and notifying the party that the arbitrator will supply hard copies of this information upon request.

(~~G~~2) *(Reliance on representation that not a consumer arbitration)* An arbitrator is not required to make the disclosures required by this standard ~~subdivision (b)(12)~~ if he or she reasonably believes that the arbitration is not a consumer arbitration based on reasonable reliance on a consumer party's representation that the arbitration is not a consumer arbitration.

(b) [Additional disclosures required] In addition to the disclosures required under standard 7, in a consumer arbitration as defined in standard 2(b) in which a dispute resolution provider organization is coordinating, administering, or providing the arbitration services, a person who is nominated or appointed as an arbitrator ~~and the arbitrator was appointed~~ on or after January 1, 2003, must disclose the following within the time and in the same manner as the disclosures required

under standard 7(c): ~~any significant past, present, or currently expected financial or professional relationship or affiliation between that dispute resolution provider organization and a party or lawyer in the arbitration.~~

(1) *(Relationships between the provider organization and party or lawyer in arbitration)* Any significant past, present, or currently expected financial or professional relationship or affiliation between the administering dispute resolution provider organization and a party or lawyer in the arbitration. Information ~~about the relationships or affiliations between the dispute resolution provider organization and a party or lawyer in the arbitration~~ that must be disclosed under this ~~paragraph~~standard ~~-~~includes:

(~~i~~) ~~The provider organization has a financial interest in a party.~~

(~~ii~~A) A party, a lawyer in the arbitration, or a law firm with which a lawyer in the arbitration is currently ~~affiliated~~ associated is a member of ~~or has a financial interest in~~ the provider organization.

(~~iii~~B) Within the preceding two years, the provider organization has received a gift, bequest, or favor from a party, a lawyer in the arbitration, or a law firm with which a lawyer in the arbitration is currently ~~affiliated~~ associated.

(~~iv~~C) The provider organization has entered into, or the arbitrator currently expects that the provider organization will enter into, an agreement or relationship with any party or lawyer in the ~~current~~ arbitration or a law firm with which a lawyer in the ~~current~~ arbitration is currently ~~affiliated~~ associated under which the provider organization will administer, coordinate, or provide dispute resolution services in other noncollective bargaining matters or will provide other consulting services for that party, lawyer, or law firm.

(~~v~~D) The provider organization is coordinating, administering, or providing dispute resolution services or has coordinated, administered, or provided such services in another pending or prior noncollective bargaining case in which a party or lawyer in the ~~current~~ arbitration is a party or a lawyer.

MOVED TO (c)

~~(B) [Provider organization and arbitrator]. If a relationship or affiliation is disclosed under paragraph (12), the arbitrator must also provide information about the following:~~

~~(i) Any financial relationship or affiliation the arbitrator has with the provider organization other than receiving referrals of cases;~~

~~(ii) The provider organization's process and criteria for recruiting, screening, and training the panel of arbitrators from which the arbitrator in this case is to be selected;~~

~~(iii) The provider organization's process for identifying, recommending, and selecting potential arbitrators for specific cases; and~~

~~(iv) Any role the provider organization plays in ruling on requests for disqualification of the arbitrator.~~

~~(C) [Prior case, time frame].~~ For purposes of this paragraph ~~(A)(v)~~, "prior case" means a case in which the dispute resolution neutral affiliated with the provider organization concluded his or her service within the two years before the date of the arbitrator's proposed nomination or appointment, but does not include any case in which the dispute resolution neutral concluded his or her service before July 1, 2002.

(D2**) ~~[Case information]~~** *(Case information)* If the provider organization is acting or has acted in any of the capacities described in paragraph ~~(b)(i)~~(1)(D), the arbitrator must disclose ~~the number of pending and prior cases involving each party or lawyer in the arbitration in which the provider organization is acting or has acted in such capacity. The arbitrator must also disclose the date of the decision, the prevailing party, the names of the parties' attorneys, and the amount of monetary damages awarded, if any,in~~:

(A) The names of the parties in each prior or pending case and, where applicable, the name of the attorney in the current arbitration who is involved in the pending case or who was involved in the prior case;

(B) The type of dispute resolution services (arbitration, mediation, reference, etc.) coordinated, administered, or provided by the provider organization in the case; and

(C) In each ~~such~~ prior case in which a dispute resolution neutral affiliated with the provider organization rendered a decision as an arbitrator, a temporary judge appointed under article VI, § 4 of the California Constitution, or a referee appointed under Code of Civil Procedure sections 638 or 639, the date of the decision, the prevailing party, the amount of monetary damages awarded, if any, and the names of the parties' attorneys.

(E3**)~~[Summary of case information about cases]~~** *(Summary of case information)* If the total number of cases disclosed under paragraph (1)(D) is greater than five, the arbitrator must also provide a summary of these cases that states:

(A) The number of pending cases in which the provider organization is currently providing each type of dispute resolution services:

(B) The number of prior cases in which the provider organization previously provided each type of dispute resolution services;

(C) ~~t~~The number of ~~such~~ prior cases in which a neutral affiliated with the provider organization rendered a decision as an arbitrator, a temporary judge, or a referee; and

(D) The number of such prior cases in which the party to the current arbitration or the party represented by the lawyer in the current arbitration was the prevailing party.

(~~B~~c) [Relationship between provider organization and arbitrator]. If a relationship or affiliation is disclosed under paragraph (~~1~~2b), the arbitrator must also provide information about the following:

(~~i~~1) Any financial relationship or affiliation the arbitrator has with the provider organization other than receiving referrals of cases, including whether the arbitrator has a financial interest in the provider organization or is an employee of the provider organization;

(~~ii~~2) The provider organization's process and criteria for recruiting, screening, and training the panel of arbitrators from which the arbitrator in this case is to be selected;

(~~iii~~3)The provider organization's process for identifying, recommending, and selecting potential arbitrators for specific cases; and

(~~iv~~4) Any role the provider organization plays in ruling on requests for disqualification of the arbitrator.

MOVED TO (a) AND NEW STANDARD 9

~~(F) [Reliance on information provided by provider organization].~~ ~~Except as to the information in (B)(i), an arbitrator may rely on information supplied by the provider organization in making the disclosures required by subdivisions (b)(12)(A) and (B) of this standard. If the information that must be disclosed is available on the Internet, the arbitrator may comply with the obligation to disclose this information by providing the Internet address at which the information is located and notifying the party that the arbitrator will supply hard copies of this information upon request. An arbitrator will be deemed to have complied with the obligation to inform himself or herself of and to disclose the information required by subdivisions (b)(12)(A) and (B) of this standard if the arbitrator:~~

(~~i~~1) ~~Provides a written declaration stating that he or she has asked the dispute resolution provider organization for this information and identifying any category of information that the arbitrator was not able to obtain from the provider organization; and~~

(~~ii~~2) ~~Has disclosed all the information within his or her knowledge pertaining to the relationships between the provider organization and the parties and lawyers in the arbitration.~~

~~(G) [Reliance on representation that not a consumer arbitration] An arbitrator is not required to make the disclosures required by subdivision (b)(12) if he or she reasonably believes that the arbitration is not a consumer arbitration based on reasonable reliance on a consumer party's representation that the arbitration is not a consumer arbitration.~~

(~~H~~d)[Effective date] The provisions of ~~subdivision (b)(12) of~~ this standard take effect on January 1, 2003. Persons who are serving in arbitrations in which they were appointed to serve as arbitrators before January 1, 2003, are not subject to this standard ~~subdivision (b)(12)~~ in those pending arbitrations.

Comment to Standard 8

This standard only applies in consumer arbitrations in which a dispute resolution provider organization is administering the arbitration. Like standard 7, this standard expands upon the existing statutory disclosure requirements. Code of

Civil Procedure section 1281.95 requires arbitrators in certain construction defect arbitrations to make disclosures concerning relationships between their employers or arbitration services and the parties in the arbitration. This standard requires arbitrators in all consumer arbitrations to disclose any financial or professional relationship between the administering provider organization and any party, attorney, or law firm in the arbitration and, if any such relationship exists, then the arbitrator must also disclose his or her relationship with the dispute resolution provider organization. This standard does not require an arbitrator to disclose if the provider organization has a financial interest in a party or lawyer in the arbitration or if a party or lawyer in the arbitration has a financial interest in the provider organization because provider organizations are prohibited under Code of Civil Procedure section 1281.92 from administering any consumer arbitration where any such relationship exists.

Subdivision (b). Currently expected relationships or affiliations that must be disclosed include all relationships or affiliations that the arbitrator, at the time the disclosure is made, expects will be formed. For example, if the arbitrator knows that the administering provider organization has agreed in concept to enter into a business relationship with a party, but they have not yet signed a written agreement formalizing that relationship, this would be a "currently expected" relationship that the arbitrator would be required to disclose.

Standard 9. Arbitrators' duty to inform themselves about matters to be disclosed

(a) [General duty to inform him or herself] A person who is nominated or appointed as an arbitrator must make a reasonable effort to inform himself or herself of matters that must be disclosed under standards 7 and 8.

(b) [Obligation regarding extended family relationships] An arbitrator can fulfill ~~will be deemed to have complied with his or her~~ the obligation under this standard to inform himself or herself of ~~and to disclose~~ relationships or other matters involving his or her extended family and former spouse that are required to be disclosed under standard 7 by ~~if the arbitrator~~:

(1) ~~declares in writing that he or she has sought~~ Seeking information about these relationships ~~or~~ and matters from the members of his or her immediate family and any members of his or her extended family living in his or her household; and

(2) Declaring in writing that he or she has made the inquiry in (1).~~has disclosed all the information pertaining to these relationships or other matters within his or her knowledge.~~

(c) [Obligation regarding relationships with associates of lawyer in the arbitration] An arbitrator can fulfill the obligation under this standard

to inform himself or herself of relationships with any lawyer associated in the practice of law with the lawyer in the arbitration that are required to be disclosed under standard 7 by:

(1) Informing the lawyer in the arbitration, in writing, of all such relationships within his or her knowledge and asking the lawyer if the lawyer is aware of any other such relationships;

(2) Declaring in writing that he or she has made the inquiry in (1) and attaching to this declaration copies of his or her inquiry and any response from the lawyer in the arbitration.

(d) [~~Services commenced prior to~~Obligation regarding service as a neutral other than an arbitrator before July 1, 2002] An arbitrator ~~will be deemed to have complied with this requirement with respect to any such services commenced prior to July 1, 2002, if the arbitrator declares in writing that he or she has requested the required information from~~can fulfill the obligation under this standard to inform himself or herself of his or her service as a dispute resolution neutral other than as an arbitrator in cases that commenced prior to July 1, 2002, by:

(1) Asking any dispute resolution provider organization ~~administering~~ that administered those prior services~~and has disclosed all required information pertaining to those services within his or her knowledge~~ for this information; and

(2) Declaring in writing that he or she has made the inquiry in (1) and attaching to this declaration copies of his or her inquiry and any response from the provider organization.

(e) [Obligation regarding relationships with provider organization] An arbitrator ~~will be deemed to have complied with the obligation to inform himself or herself of and to disclose the information required by subdivisions (b)(12)(A) and (B) of this standard if the arbitrator~~ can fulfill his or her obligation under this standard to inform himself or herself of the information that is required to be disclosed under standard 8 by:

(~~i~~1) ~~Provides a written declaration stating that he or she has asked~~ Asking the dispute resolution provider organization for this information; and

(2) Declaring in writing that he or she has made the inquiry in (1) and attaching to this declaration copies of his or her inquiry and any response from the provider organization. ~~identifying any category of information that the arbitrator was not able to obtain from the provider organization.; and~~

~~(ii) Has disclosed all the information within his or her knowledge pertaining to the relationships between the provider organization and the parties and lawyers in the arbitration and the relationship between the provider organization and the arbitrator.~~

Comment to Standard 9

~~?~~ This standard expands arbitrators existing duty of reasonable inquiry that applies with respect to financial interests under Code of Civil Procedure section 170.1(a)(3), to require arbitrators to make a reasonable effort to inform themselves about all matters that must be disclosed. This standard also clarifies what constitutes a reasonable effort by an arbitrator to inform himself or herself about specified matters, including relationships or other matters concerning his or her extended family and relationships with attorneys associated in the practice of law with the attorney in the arbitration (such as associates encompasse~~s~~d within the term "lawyer for a party").

Standard ~~8~~10. Disqualification

(a) An arbitrator is disqualified if:

(1) The arbitrator fails to comply with his or her obligation to make disclosures~~make a required disclosure within the time specified in Code of Civil Procedure section 1281.9(b)~~ and a party serves a notice of disqualification in the manner and within the time specified in Code of Civil Procedure section 1281.91;

(2) The arbitrator complies with his or her obligation to make disclosures within 10 calendar days of service of notice of the proposed nomination or appointment~~makes a required disclosure within the time specified in Code of Civil Procedure section 1281.9(b)~~ and, based on that disclosure, a party serves a notice of disqualification in the manner and within the time specified in Code of Civil Procedure section 1281.91;

(3) ~~After the time specified in Code of Civil Procedure section 1281.9(b), an~~ The arbitrator makes a required disclosure more than

10 calendar days after service of notice of nomination or appointment and, based on that disclosure, a party serves a notice of disqualification in the manner and within the time specified in Code of Civil Procedure section 1281.91;

(4) A party becomes aware that an arbitrator has made a material omission or material misrepresentation in his or her disclosure and, within 15 days after becoming aware of the omission or misrepresentation and within the time specified in Code of Civil Procedure section 1281.91(c), the party serves a notice of disqualification that clearly describes the material omission or material misrepresentation and how and when the party became aware of this omission or misrepresentation; or

(5) If any ground specified in Code of Civil Procedure section 170.1 exists and the party makes a demand that the arbitrator disqualify himself or herself in the manner and within the time specified in Code of Civil Procedure section 1281.91(d).

(b) For purposes of this standard, "~~required~~ obligation to make disclosure" means ~~a disclosure required~~ an arbitrator's obligation to make disclosure under standard 7 or Code of Civil Procedure section 1281.9.

(c) Notwithstanding any contrary request, consent, or waiver by the parties, an arbitrator must disqualify himself or herself if he or she concludes at any time during the arbitration that he or she is not able to conduct the arbitration impartially.

Comment to Standard ~~8~~10

Code of Civil Procedure section 1281.91 already establishes requirements concerning disqualification of arbitrators. This standard does not eliminate or otherwise limit those requirements or change existing authority or procedures for challenging an arbitrator's failure to disqualify himself or herself. The provisions of subdivisions (a)(1), ~~and~~ (2), and (5) restate existing disqualification procedures under section 1281.91(a), ~~and~~ (b), and (d) when an arbitrator makes, or fails to make, initial disclosures or where a section 170.1 ground exists. The provisions of subdivisions (a)(3) and (4) clarify the requirements relating to disqualification based on disclosure made by the ~~neutral~~ arbitrator after appointment or based on the discovery by the party of a material omission or misrepresentation in the arbitrator's disclosure.

Standard ~~9~~11. Duty to refuse gift, bequest, or favor

(a) An arbitrator must not, under any circumstances, accept a gift, bequest, favor, or honoraria from a party or any other person or entity whose interests are reasonably likely to come before the arbitrator in the arbitration.

(b) From service of notice of appointment or appointment until two years after the conclusion of the arbitration, an arbitrator must not, under any circumstances, accept a gift, bequest, favor, or honoraria from a party or any other person or entity whose interests have come before the arbitrator in the arbitration.

(c) An arbitrator must discourage members of his or her family residing in his or her household from accepting a gift, bequest, favor, or honoraria that the arbitrator would be prohibited from accepting under subdivisions (a) or (b).

(d) This standard does not prohibit an arbitrator from demanding or receiving a fee for services or expenses.

Comment to Standard ~~9~~11

Gifts and favors do not include any rebate or discount made available in the regular course of business to members of the public.

Standard ~~10~~12. Duties and limitations regarding future professional relationships or employment

(a) **[Offers as lawyer, expert witness, or consultant]** From the time of appointment until the conclusion of the arbitration, an arbitrator must not entertain or accept any offers of employment or new professional relationships as a lawyer, an expert witness, or a consultant from a party or a lawyer for a party in the pending arbitration ~~or a lawyer or law firm that is currently associated in the private practice of law with a lawyer in the arbitration~~.

(b) **[Offers for other employment or professional relationships]** In addition to the disclosures required by standards 7 and 8, within 10 calendar days of service of notice of the proposed nomination or appointment ~~the time specified in subdivision (b) of Code of Civil Procedure section 1281.9~~, a proposed arbitrator must disclose to all

parties in writing ~~-~~if ~~whether or not~~, while that arbitration is pending, he or she will entertain offers of employment or new professional relationships in any capacity other than as a lawyer, expert witness, or consultant from a party~~, a lawyer in the arbitration~~, or a lawyer for a party~~,or law firm that is currently associated in the private practice of law with a lawyer in the arbitration while that arbitration is pending~~, including offers to serve as a dispute resolution neutral in another case. A party may disqualify the arbitrator based on this disclosure by serving a notice of disqualification in the manner and within the time specified in Code of Civil Procedure section 1281.91(b).

(c) [Acceptance of offers prohibited unless intent disclosed] If an arbitrator fails to make the disclosure required by subdivision (b) of this standard from the time of appointment until the conclusion of the arbitration ~~or if, in the disclosure made pursuant to subdivision (b), the arbitrator states that he or she will not entertain offers of employment or new professional relationships from the time of appointment until the conclusion of the arbitration~~, the arbitrator must not entertain or accept any such offers of employment or new professional relationships.

~~**(d) [Informed consent required in consumer arbitrations]** If, in the disclosure made under subdivision (b), the arbitrator states that he or she will entertain offers of employment or new professional relationships, the arbitrator may entertain such offers. However, in consumer arbitrations, from the time of appointment until the conclusion of the arbitration, the arbitrator must not accept any such offers without the informed consent of all parties to the current arbitration.~~

~~(1) Unless the arbitrator rejects the offer, within five days of receiving any such offer, the arbitrator in a consumer arbitration must notify the parties in writing of the offer and of the parties' right to object to the arbitrator accepting that offer within seven days.~~

~~(2) If within seven days after the arbitrator serves this written notice, no party objects to the arbitrator accepting the offer, the arbitrator may accept it.~~

~~(3) If an arbitrator has informed the parties in a pending arbitration about an offer and has sought the parties' consent as required by this subdivision, the arbitrator is not also required to disclose that offer under standard 7.~~

~~(4) An arbitrator is not required to seek the parties' consent under this subdivision if he or she reasonably believes that the arbitration is not a consumer arbitration based on reasonable reliance on a consumer party's representation that the arbitration is not a consumer arbitration.~~

(e~~d~~) [Relationships and use of confidential information related to the arbitrated case] An arbitrator must not at any time~~:~~,

(1) Without the informed written consent of all parties, enter into any professional relationship or accept any professional employment as a lawyer, an expert witness, or a consultant relating to the case arbitrated; or

(2) Without the informed written consent of the party, enter into any professional relationship or accept employment in another matter in which information that he or she has received in confidence from a party by reason of serving as an arbitrator in a case is material.

Standard ~~11~~13. Conduct of proceeding

(a) An arbitrator must conduct the arbitration fairly, promptly, and diligently and in accordance with the applicable law relating to the conduct of arbitration proceedings.

(b) In making the decision, an arbitrator must not be swayed by partisan interests, public clamor, or fear of criticism.

Comment to Standard ~~11~~13

Subdivision (a). The arbitrator's duty to dispose of matters promptly and diligently must not take precedence over the arbitrator's duty to dispose of matters fairly.

Conducting the arbitration in a procedurally fair manner includes conducting a balanced process in which each party is given an opportunity to participate. When one but not all parties are unrepresented, an arbitrator must ensure that the party appearing without counsel has an adequate opportunity to be heard and involved. Conducting the arbitration promptly and diligently requires expeditious management of all stages of the proceeding and concluding the case as promptly as the circumstances reasonably permit. During an arbitration, an arbitrator may discuss the issues, arguments, and evidence with the parties or their counsel, ~~to~~ make interim rulings, and otherwise to control or direct the arbitration. This standard is not intended to restrict these activities.

The arbitrator's duty to uphold the integrity and fairness of the arbitration process includes an obligation to make reasonable efforts to prevent delaying tactics, harassment of any participant, or other abuse of the arbitration process. It is recognized, however, that the arbitrator's reasonable efforts may not successfully control all conduct of the participants.

For the general law relating to the conduct of arbitration proceedings, see chapter 3 of title 9 of part III of the Code of Civil Procedure, sections 1282–1284.2, relating to the conduct of arbitration proceedings. See also Code of Civil Procedure section 1286.2 concerning an arbitrator's unreasonable refusal to grant a continuance as grounds for vacatur of the award.

Standard ~~12~~14. Ex parte communications

(a) An arbitrator must not initiate, permit, or consider any ex parte communications or consider other communications made to the arbitrator outside the presence of all of the parties concerning a pending or impending arbitration, except as permitted by this standard, by agreement of the parties, or by applicable law.

(b) An arbitrator may communicate with a party in the absence of other parties about administrative matters, such as setting the time and place of hearings or making other arrangements for the conduct of the proceedings, as long as the arbitrator reasonably believes that the communication will not result in a procedural or tactical advantage for any party. When such a discussion occurs, the arbitrator must promptly inform the other parties of the communication and must give the other parties an opportunity to respond before making any final determination concerning the matter discussed.

(c) An arbitrator may obtain the advice of a disinterested expert on the subject matter of the arbitration if the arbitrator notifies the parties of the person consulted and the substance of the advice and affords the parties a reasonable opportunity to respond.

Comment to Standard ~~12~~14

See also Code of Civil Procedure sections 1282.2(e) regarding the arbitrator's authority to hear a matter when a party fails to appear and 1282.2(g) regarding the procedures that must be followed if an arbitrator intends to base an award on information not obtained at the hearing.

Standard ~~13~~15. Confidentiality

(a) An arbitrator must not use or disclose information that he or she received in confidence by reason of serving as an arbitrator in a case to gain personal advantage. This duty applies from acceptance of appointment and continues after the conclusion of the arbitration.

(b) An arbitrator must not inform anyone of the award in advance of the time that the award is given to all parties. This standard does not prohibit an arbitrator from providing all parties with a tentative or draft decision for review or from providing an award to an assistant or to the provider organization that is coordinating, administering, or providing the arbitration services in the case for purposes of copying and distributing the award to all parties.

Standard ~~14~~16. Compensation

(a) An arbitrator must not charge any fee for services or expenses that is in any way contingent on the result or outcome of the arbitration.

(b) Before accepting appointment, an arbitrator, a dispute resolution provider organization, or another person or entity acting on the arbitrator's behalf must inform all parties in writing of the terms and conditions of the arbitrator's compensation. This information must include any basis to be used in determining fees and any special fees for cancellation, research and preparation time, or other purposes.

Standard ~~15~~17. Marketing

(a) An arbitrator must be truthful and accurate in marketing his or her services and must not make any representation that directly or indirectly implies favoritism or a specific outcome. An arbitrator must ensure that his or her personal marketing activities and any activities carried out on his or her behalf, including any activities of a provider organization with which the arbitrator is affiliated, comply with this requirement.

(b) An arbitrator must not solicit business from a participant in the arbitration while the arbitration is pending.

Comment to Standard ~~15~~17

Subdivision (b). This provision is not intended to prohibit an arbitrator from accepting another arbitration from a party or attorney in the arbitration while the

first matter is pending, as long as the arbitrator complies with the provisions of standard ~~10~~ 12 and there was no express solicitation of this business by the arbitrator.

Drafter's Notes

Standards 1–~~15~~17 implement Code of Civil Procedure section 1281.85, which requires the Judicial Council to adopt ethics standards for all neutral arbitrators serving in arbitrations pursuant to an arbitration agreement. Among other things, they address the disclosure of interests, relationships, or affiliations that may constitute conflicts of interest, the acceptance of gifts, the establishment of future professional relationships, ex-parte communication, fees, and marketing.

DIVISION VI. Ethics Standards for Neutral Arbitrators in Contractual Arbitration

Standard 1. Purpose, intent, and construction

(a) These standards are adopted under the authority of Code of Civil Procedure section 1281.85 and establish the minimum standards of conduct for neutral arbitrators who are subject to these standards. They are intended to guide the conduct of arbitrators, to inform and protect participants in arbitration, and to promote public confidence in the arbitration process.

(b) For arbitration to be effective there must be broad public confidence in the integrity and fairness of the process. Arbitrators are responsible to the parties, the other participants, and the public for conducting themselves in accordance with these standards so as to merit that confidence.

(c) These standards are to be construed and applied to further the purpose and intent expressed in subdivisions (a) and (b) and in conformance with all applicable law.

(d) These standards are not intended to affect any existing civil cause of action or create any new civil cause of action.

Comment to Standard 1

Code of Civil Procedure section 1281.85 provides that, beginning July 1, 2002, a person serving as a neutral arbitrator pursuant to an arbitration agreement shall comply with the ethics standards for arbitrators adopted by the Judicial Council pursuant to that section.

While the grounds for vacating an arbitration award are established by statute, not these standards, an arbitrator's violation of these standards may, under some circumstances, fall within one of those statutory grounds. (See Code Civ. Proc., § 1286.2.) A failure to disclose within the time required for disclosure a ground for disqualification of which the arbitrator was then aware is a ground for vacatur of the arbitrator's award. (See Code Civ. Proc., § 1286.2(a)(6)(A).) Violations of other obligations under these standards may also constitute grounds for vacating an arbitration award under section 1286.2(a)(3) if "the rights of the party were substantially prejudiced" by the violation.

While vacatur may be an available remedy for violation of these standards, these standards are not intended to affect any civil cause of action that may currently exist nor to create any new civil cause of action. These standards are also not intended to establish a ceiling on what is considered good practice in arbitration or to discourage efforts to educate arbitrators about best practices.

Standard 2. Definitions

As used in these standards:

(a) [Arbitrator and neutral arbitrator]

(1) "Arbitrator" and "neutral arbitrator" mean any arbitrator who is subject to these standards and who is to serve impartially, whether selected or appointed:

(A) Jointly by the parties or by the arbitrators selected by the parties;

(B) By the court, when the parties or the arbitrators selected by the parties fail to select an arbitrator who was to be selected jointly by them; or

(C) By a dispute resolution provider organization, under an agreement of the parties.

(2) Where the context includes events or acts occurring before an appointment is final, "arbitrator" and "neutral arbitrator" include a person who has been served with notice of a proposed nomination or appointment.

(b) "Applicable law" means constitutional provisions, statutes, decisional law, California Rules of Court, and other statewide rules or regulations that apply to arbitrators who are subject to these standards.

(c) "Conclusion of the arbitration" means the following:

(1) When the arbitrator is disqualified or withdraws or the case is settled or dismissed before the arbitrator makes an award, the date on which the arbitrator's appointment is terminated;

(2) When the arbitrator makes an award and no party makes a timely application to the arbitrator to correct the award, the final date for making an application to the arbitrator for correction; or

(3) When a party makes a timely application to the arbitrator to correct the award, the date on which the arbitrator serves a corrected award or a denial on each party, or the date on which denial occurs by operation of law.

(d) "Consumer arbitration" means an arbitration conducted under a predispute arbitration provision contained in a contract that meets the criteria listed in paragraphs (1) through (3) below. "Consumer arbitration" excludes arbitration proceedings conducted under or arising out of public or private sector labor-relations laws, regulations, charter provisions, ordinances, statutes, or agreements.

(1) The contract is with a consumer party, as defined in these standards;

(2) The contract was drafted by or on behalf of the nonconsumer party; and

(3) The consumer party was required to accept the arbitration provision in the contract.

(e) "Consumer party" is a party to an arbitration agreement who, in the context of that arbitration agreement, is any of the following:

(1) An individual who seeks or acquires, including by lease, any goods or services primarily for personal, family, or household purposes including, but not limited to, financial services, insurance, and other goods and services as defined in section 1761 of the Civil Code;

(2) An individual who is an enrollee, a subscriber, or insured in a health-care service plan within the meaning of section 1345 of the Health and Safety Code or health-care insurance plan within the meaning of section 106 of the Insurance Code;

(3) An individual with a medical malpractice claim that is subject to the arbitration agreement; or

(4) An employee or an applicant for employment in a dispute arising out of or relating to the employee's employment or the applicant's prospective employment that is subject to the arbitration agreement.

(f) "Dispute resolution neutral" means a temporary judge appointed under article VI, section 21 of the California Constitution, a referee appointed under Code of Civil Procedure section 638 or 639, an arbitrator, a

neutral evaluator, a special master, a mediator, a settlement officer, or a settlement facilitator.

(g) "Dispute resolution provider organization" and "provider organization" mean any nongovernmental entity that, or individual who, coordinates, administers, or provides the services of two or more dispute resolution neutrals.

(h) "Domestic partner" means a domestic partner as defined in Family Code section 297.

(i) "Financial interest" means a financial interest within the meaning of Code of Civil Procedure section 170.5.

(j) "Gift" means a gift as defined in Code of Civil Procedure section 170.9(l).

(k) "Honoraria" means honoraria as defined in Code of Civil Procedure section 170.9(h) and (i).

(l) "Lawyer in the arbitration" means the lawyer hired to represent a party in the arbitration.

(m) "Lawyer for a party" means the lawyer hired to represent a party in the arbitration and any lawyer or law firm currently associated in the practice of law with the lawyer hired to represent a party in the arbitration.

(n) "Member of the arbitrator's immediate family" means the arbitrator's spouse or domestic partner and any minor child living in the arbitrator's household.

(o) "Member of the arbitrator's extended family" means the parents, grandparents, great-grandparents, children, grandchildren, great-grandchildren, siblings, uncles, aunts, nephews, and nieces of the arbitrator or the arbitrator's spouse or domestic partner or the spouse of such person.

(p) [Party]

(1) "Party" means a party to the arbitration agreement:

(A) Who seeks to arbitrate a controversy pursuant to the agreement;

(B) Against whom such arbitration is sought; or

(C) Who is made a party to such arbitration by order of a court or the arbitrator upon such party's application, upon the application of any other party to the arbitration, or upon the arbitrator's own determination.

(2) "Party" includes the representative of a party, unless the context requires a different meaning.

(q) "Party-arbitrator" means an arbitrator selected unilaterally by a party.

(r) "Private practice of law" means private practice of law as defined in Code of Civil Procedure section 170.5.

(s) "Significant personal relationship" includes a close personal friendship.

Comment to Standard 2

Subdivision (a). The definition of "arbitrator" and "neutral arbitrator" in this standard is intended to include all arbitrators who are to serve in a neutral and impartial manner and to exclude unilaterally selected arbitrators.

Subdivisions (l) and (m). Arbitrators should take special care to note that there are two different terms used in these standards to refer to lawyers who represent parties in the arbitration. In particular, arbitrators should note that the term "lawyer for a party" includes any lawyer or law firm currently associated in the practice of law with the lawyer hired to represent a party in the arbitration.

Subdivision (p)(2). While this provision generally permits an arbitrator to provide required information or notices to a party's attorney as that party's representative, a party's attorney should not be treated as a "party" for purposes of identifying matters that an arbitrator must disclose under standards 7 or 8, as those standards contain separate, specific requirements concerning the disclosure of relationships with a party's attorney.

Other terms that may be pertinent to these standards are defined in Code of Civil Procedure section 1280.

Standard 3. Application and effective date

(a) Except as otherwise provided in this standard and standard 8, these standards apply to all persons who are appointed to serve as neutral

arbitrators on or after July 1, 2002, in any arbitration under an arbitration agreement, if:

(1) The arbitration agreement is subject to the provisions of title 9 of part III of the Code of Civil Procedure (commencing with section 1280); or

(2) The arbitration hearing is to be conducted in California.

(b) These standards do not apply to:

(1) Party arbitrators, as defined in these standards; or

(2) Any arbitrator serving in:

(A) An international arbitration proceeding subject to the provisions of title 9.3 of part III of the Code of Civil Procedure;

(B) A judicial arbitration proceeding subject to the provisions of chapter 2.5 of title 3 of part III of the Code of Civil Procedure;

(C) An attorney-client fee arbitration proceeding subject to the provisions of article 13 of chapter 4 of division 3 of the Business and Professions Code;

(D) An automobile warranty dispute resolution process certified under California Code of Regulations title 16, division 33.1;

(E) An arbitration of a workers' compensation dispute under Labor Code sections 5270 through 5277;

(F) An arbitration conducted by the Workers' Compensation Appeals Board under Labor Code section 5308;

(G) An arbitration of a complaint filed against a contractor with the Contractors State License Board under Business and Professions Code sections 7085 through 7085.7; or

(H) An arbitration conducted under or arising out of public or private sector labor-relations laws, regulations, charter provisions, ordinances, statutes, or agreements.

(c) Persons who are serving in arbitrations in which they were appointed to serve as arbitrators before July 1, 2002, are not subject to these standards in those arbitrations. Persons who are serving in arbitrations in which they were appointed to serve as arbitrators before January 1, 2003, are not subject to standard 8 in those arbitrations.

Comment to Standard 3

With the exception of standard 8, these standards apply to all neutral arbitrators appointed on or after July 1, 2002, who meet the criteria of subdivision (a). Arbitration provider organizations, although not themselves subject to these standards, should be aware of them when performing administrative functions that involve arbitrators who are subject to these standards. A provider organization's policies and actions should facilitate, not impede, compliance with the standards by arbitrators who are affiliated with the provider organization.

Standard 4. Duration of duty

(a) Except as otherwise provided in these standards, an arbitrator must comply with these ethics standards from acceptance of appointment until the conclusion of the arbitration.

(b) If, after the conclusion of the arbitration, a case is referred back to the arbitrator for reconsideration or rehearing, the arbitrator must comply with these ethics standards from the date the case is referred back to the arbitrator until the arbitration is again concluded.

Standard 5. General duty

An arbitrator must act in a manner that upholds the integrity and fairness of the arbitration process. He or she must maintain impartiality toward all participants in the arbitration at all times.

Comment to Standard 5

This standard establishes the overarching ethical duty of arbitrators. The remaining standards should be construed as establishing specific requirements that implement this overarching duty in particular situations.

Maintaining impartiality toward all participants during all stages of the arbitration is central to upholding the integrity and fairness of the arbitration. An arbitrator must perform his or her duties impartially, without bias or prejudice, and must not, in performing these duties, by words or conduct manifest partiality, bias, or prejudice, including but not limited to partiality, bias, or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation,

socioeconomic status, or the fact that a party might select the arbitrator to serve as an arbitrator in additional cases. After accepting appointment, an arbitrator should avoid entering into any relationship or acquiring any interest that might reasonably create the appearance of partiality, bias, or prejudice. An arbitrator does not become partial, biased, or prejudiced simply by having acquired knowledge of the parties, the issues or arguments, or the applicable law.

Standard 6. Duty to refuse appointment

Notwithstanding any contrary request, consent, or waiver by the parties, a proposed arbitrator must decline appointment if he or she is not able to be impartial.

Standard 7. Disclosure

(a) [Intent] This standard is intended to identify the matters that must be disclosed by a person nominated or appointed as an arbitrator. To the extent that this standard addresses matters that are also addressed by statute, it is intended to include those statutory disclosure requirements, not to eliminate, reduce, or otherwise limit them.

(b) [General provisions] For purposes of this standard:

(1) (*Collective bargaining cases excluded*) The terms "cases" and "any arbitration" do not include collective bargaining cases or arbitrations conducted under or arising out of collective bargaining agreements between employers and employees or between their respective representatives.

(2) (*Offers of employment or professional relationship*) If an arbitrator has disclosed to the parties in an arbitration that he or she will entertain offers of employment or of professional relationships from a party or lawyer for a party while the arbitration is pending as required by subdivision (b) of standard 12, the arbitrator is not required to disclose to the parties in that arbitration any such offer from a party or lawyer for a party that he or she subsequently receives or accepts while that arbitration is pending.

(3) (*Names of parties in cases*) When making disclosures about other pending or prior cases, in order to preserve confidentiality, it is sufficient to give the name of any party who is not a party to the pending arbitration as "claimant" or "respondent" if the party is an individual and not a business or corporate entity.

(c) [Time and manner of disclosure] Within ten calendar days of service of notice of the proposed nomination or appointment, a proposed arbitrator must disclose to all parties in writing all matters listed in subdivisions (d) and (e) of this standard of which the arbitrator is then aware. If an arbitrator subsequently becomes aware of a matter that must be disclosed under either subdivision (d) or (e) of this standard, the arbitrator must disclose that matter to the parties in writing within 10 calendar days after the arbitrator becomes aware of the matter.

(d) [Required disclosures] A person who is nominated or appointed as an arbitrator must disclose all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed arbitrator would be able to be impartial, including all of the following:

(1) (*Family relationships with party*) The arbitrator or a member of the arbitrator's immediate or extended family is a party, a party's spouse or domestic partner, or an officer, director, or trustee of a party.

(2) (*Family relationships with lawyer in the arbitration*) The arbitrator, or the spouse, former spouse, domestic partner, child, sibling, or parent of the arbitrator or the arbitrator's spouse or domestic partner is:

(A) A lawyer in the arbitration;

(B) The spouse or domestic partner of a lawyer in the arbitration; or

(C) Currently associated in the private practice of law with a lawyer in the arbitration.

(3) (*Significant personal relationship with party or lawyer for a party*) The arbitrator or a member of the arbitrator's immediate family has or has had a significant personal relationship with any party or lawyer for a party.

(4) (*Service as arbitrator for a party or lawyer for party*)

(A) The arbitrator is serving or, within the preceding five years, has served:

(i) As a neutral arbitrator in another prior or pending noncollective bargaining case involving a party to the current arbitration or a lawyer for a party.

(ii) As a party-appointed arbitrator in another prior or pending noncollective bargaining case for either a party to the current arbitration or a lawyer for a party.

(iii) As a neutral arbitrator in another prior or pending noncollective bargaining case in which he or she was selected by a person serving as a party-appointed arbitrator in the current arbitration

(B) [Case information] If the arbitrator is serving or has served in any of the capacities listed under (A), he or she must disclose:

(i) The names of the parties in each prior or pending case and, where applicable, the name of the attorney representing the party in the current arbitration who is involved in the pending case, who was involved in the prior case, or whose current associate is involved in the pending case or was involved in the prior case.

(ii) The results of each prior case arbitrated to conclusion, including the date of the arbitration award, identification of the prevailing party, the amount of monetary damages awarded, if any, and the names of the parties' attorneys.

(C) [Summary of case information] If the total number of the cases disclosed under (A) is greater than five, the arbitrator must provide a summary of these cases that states:

(i) The number of pending cases in which the arbitrator is currently serving in each capacity;

(ii) The number of prior cases in which the arbitrator previously served in each capacity;

(iii) The number of prior cases arbitrated to conclusion; and

(iv) The number of such prior cases in which the party to the current arbitration, the party represented by the lawyer for a party in the current arbitration or the party represented by the party-arbitrator in the current arbitration was the prevailing party.

(5) (*Compensated service as other dispute resolution neutral*) The arbitrator is serving or has served as a dispute resolution neutral other than an arbitrator in another pending or prior noncollective bargaining case involving a party or lawyer for a party and the arbitrator received or expects to receive any form of compensation for serving in this capacity.

(A) [Time frame] For purposes of this paragraph (5), "prior case" means any case in which the arbitrator concluded his or her service as a dispute resolution neutral within two years before the date of the arbitrator's proposed nomination or appointment, but does not include any case in which the arbitrator concluded his or her service before January 1, 2002.

(B) [Case information] If the arbitrator is serving or has served in any of the capacities listed under this paragraph (5), he or she must disclose:

(i) The names of the parties in each prior or pending case and, where applicable, the name of the attorney in the current arbitration who is involved in the pending case, who was involved in the prior case, or whose current associate is involved in the pending case or was involved in the prior case;

(ii) The dispute resolution neutral capacity (mediator, referee, etc.) in which the arbitrator is serving or served in the case; and

(iii) In each such case in which the arbitrator rendered a decision as a temporary judge or referee, the date of the decision, the prevailing party, the amount of monetary damages awarded, if any, and the names of the parties' attorneys.

(C) [Summary of case information] If the total number of cases disclosed under this paragraph (5) is greater than five, the arbitrator must also provide a summary of the cases that states:

(i) The number of pending cases in which the arbitrator is currently serving in each capacity;

(ii) The number of prior cases in which the arbitrator previously served in each capacity;

(iii) The number of prior cases in which the arbitrator rendered a decision as a temporary judge or referee; and

(iv) The number of such prior cases in which the party to the current arbitration or the party represented by the lawyer for a party in the current arbitration was the prevailing party.

(6) (*Current arrangements for prospective neutral service*) Whether the arbitrator has any current arrangement with a party concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in or, within the last two years, has participated in discussions regarding such prospective employment or service with a party.

(7) (*Attorney-client relationships*) Any attorney-client relationship the arbitrator has or has had with a party or lawyer for a party. Attorney-client relationships include the following:

(A) An officer, a director, or a trustee of a party is or, within the preceding two years, was a client of the arbitrator in the arbitrator's private practice of law or a client of a lawyer with whom the arbitrator is or was associated in the private practice of law;

(B) In any other proceeding involving the same issues, the arbitrator gave advice to a party or a lawyer in the arbitration concerning any matter involved in the arbitration; and

(C) The arbitrator served as a lawyer for or as an officer of a public agency which is a party and personally advised or in

any way represented the public agency concerning the factual or legal issues in the arbitration.

(8) (*Other professional relationships*) Any other professional relationship not already disclosed under paragraphs (2)-(7) that the arbitrator or a member of the arbitrator's immediate family has or has had with a party or lawyer for a party, including the following:

(A) The arbitrator was associated in the private practice of law with a lawyer in the arbitration within the last two years.

(B) The arbitrator or a member of the arbitrator's immediate family is or, within the preceding two years, was an employee of or an expert witness or a consultant for a party; and

(C) The arbitrator or a member of the arbitrator's immediate family is or, within the preceding two years, was an employee of or an expert witness or a consultant for a lawyer in the arbitration.

(9) (*Financial interests in party*) The arbitrator or a member of the arbitrator's immediate family has a financial interest in a party.

(10) (*Financial interests in subject of arbitration*) The arbitrator or a member of the arbitrator's immediate family has a financial interest in the subject matter of the arbitration.

(11) (*Affected interest*) The arbitrator or a member of the arbitrator's immediate family has an interest that could be substantially affected by the outcome of the arbitration.

(12) (*Knowledge of disputed facts*) The arbitrator or a member of the arbitrator's immediate or extended family has personal knowledge of disputed evidentiary facts relevant to the arbitration. A person who is likely to be a material witness in the proceeding is deemed to have personal knowledge of disputed evidentiary facts concerning the proceeding.

(13) (*Membership in organizations practicing discrimination*) The arbitrator's membership in any organization that practices invidious discrimination on the basis of race, sex, religion, national origin, or sexual orientation. Membership in a religious organization, an official military organization of the United States,

or a nonprofit youth organization need not be disclosed unless it would interfere with the arbitrator's proper conduct of the proceeding or would cause a person aware of the fact to reasonably entertain a doubt concerning the arbitrator's ability to act impartially.

(14) Any other matter that:

(A) Might cause a person aware of the facts to reasonably entertain a doubt that the arbitrator would be able to be impartial;

(B) Leads the proposed arbitrator to believe there is a substantial doubt as to his or her capacity to be impartial, including, but not limited to, bias or prejudice toward a party, lawyer, or law firm in the arbitration; or

(C) Otherwise leads the arbitrator to believe that his or her disqualification will further the interests of justice.

(e) [Inability to conduct or timely complete proceedings] In addition to the matters that must be disclosed under subdivision (d), an arbitrator must also disclose:

(1) If the arbitrator is not able to properly perceive the evidence or properly conduct the proceedings because of a permanent or temporary physical impairment; and

(2) Any constraints on his or her availability known to the arbitrator that will interfere with his or her ability to commence or complete the arbitration in a timely manner.

(f) [Continuing duty] An arbitrator's duty to disclose the matters described in subdivisions (d) and (e) of this standard is a continuing duty, applying from service of the notice of the arbitrator's proposed nomination or appointment until the conclusion of the arbitration proceeding.

Comment to Standard 7

This standard requires arbitrators to disclose to all parties, in writing within 10 days of service of notice of their proposed nomination or appointment, all matters they are aware of at that time that could cause a person aware of the facts to reasonably entertain a doubt that the proposed arbitrator would be able to be impartial and to disclose any additional such matters within 10 days of becoming aware of them.

Timely disclosure to the parties is the primary means of ensuring the impartiality of an arbitrator. It provides the parties with the necessary information to make an informed selection of an arbitrator by disqualifying or ratifying the proposed arbitrator following disclosure. See also standard 10, concerning disclosure and disqualification requirements relating to concurrent and subsequent employment or professional relationships between an arbitrator and a party or attorney in the arbitration. A party may disqualify an arbitrator for failure to comply with statutory disclosure obligations (see Code Civ. Proc., § 1281.91(a)). Failure to disclose, within the time required for disclosure, a ground for disqualification of which the arbitrator was then aware is a ground for *vacatur* of the arbitrator's award (see Code Civ. Proc., § 1286.2(a)(6)(A)).

The arbitrator's overarching duty under this standard, which mirrors the duty set forth in Code of Civil Procedure section 1281.9, is to inform parties about matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed arbitrator would be able to be impartial. While the remaining subparagraphs of (d) require the disclosure of specific interests, relationships, or affiliations, these are only examples of common matters that could cause a person aware of the facts to reasonably entertain a doubt that the arbitrator would be able to be impartial. The absence of the particular interests, relationships, or affiliations listed in the subparagraphs does not necessarily mean that there is no matter that could reasonably raise a question about the arbitrator's ability to be impartial and that therefore must be disclosed. An arbitrator must make determinations concerning disclosure on a case-by-case basis, applying the general criteria for disclosure under paragraph (d).

Code of Civil Procedure section 1281.85 specifically requires that the ethical standards adopted by the Judicial Council address the disclosure of interests, relationships, or affiliations that may constitute conflicts of interest, including prior service as an arbitrator or other dispute resolution neutral entity. Section 1281.85 further provides that the standards "shall be consistent with the standards established for arbitrators in the judicial arbitration program and may expand but may not limit the disclosure and disqualification requirements established by this chapter [chapter 2 of title 9 of part III, Code of Civil Procedure, sections 1281–1281.95]."

Code of Civil Procedure section 1281.9 already establishes detailed requirements concerning disclosures by arbitrators, including a specific requirement that arbitrators disclose the existence of any ground specified in Code of Civil Procedure section 170.1 for disqualification of a judge. This standard does not eliminate or otherwise limit those requirements; in large part, it simply consolidates and integrates those existing statutory disclosure requirements by topic area. This standard does, however, expand upon or clarify the existing statutory disclosure requirements in the following ways:

- Requiring arbitrators to disclose to the parties any matter about which they become aware after the time for making an initial disclosure has expired, within 10 calendar days after the arbitrator becomes aware of the matter (subdivision (f)).

- Expanding required disclosures about the relationships or affiliations of an arbitrator's family members to include those of an arbitrator's domestic partner (subdivisions (d)(1) and (2); see also definitions of immediate and extended family in standard 2).

- Requiring arbitrators, in addition to making statutorily required disclosures regarding prior service as an arbitrator for a party or attorney for a party, to disclose prior services both as neutral arbitrator selected by a party arbitrator in the current arbitration and as any other type

of dispute resolution neutral for a party or attorney in the arbitration (e.g., temporary judge, mediator, or referee) (subdivisions (d)(4)(C) and (5)).

- Requiring the arbitrator to disclose if he or she or a member of his or her immediate family is or was an employee, expert witness, or consultant for a party or a lawyer in the arbitration (subdivisions (d)(8)(A) and (B)).

- Requiring the arbitrator to disclose if he or she or a member of his or her immediate family has an interest that could be substantially affected by the outcome of the arbitration (subdivision (d)(11)).

- If a disclosure includes information about five or more cases, requiring arbitrators to provide a summary of that information (subdivisions (d)(4) and (5).

- Requiring arbitrators to disclose membership in organizations that practice invidious discrimination on the basis of race, sex, religion, national origin, or sexual orientation (subdivision (d)(13)).

- Requiring the arbitrator to disclose any constraints on his or her availability known to the arbitrator that will interfere with his or her ability to commence or complete the arbitration in a timely manner (subdivision (d)).

- Clarifying that the duty to make disclosures is a continuing obligation, requiring disclosure of matters that were not known at the time of nomination or appointment but that become known afterward (subdivision (e)).

It is good practice for an arbitrator to ask each participant to make an effort to disclose any matters that may affect the arbitrator's ability to be impartial.

Standard 8. Additional disclosures in consumer arbitrations administered by a provider organization

(a) [General provisions]

(1) *(Reliance on information provided by provider organization).* Except as to the information in (c)(1), an arbitrator may rely on information supplied by the administering provider organization in making the disclosures required by this standard. If the information that must be disclosed is available on the Internet, the arbitrator may comply with the obligation to disclose this information by providing the Internet address at which the information is located and notifying the party that the arbitrator will supply hard copies of this information upon request.

(2) *(Reliance on representation that not a consumer arbitration)* An arbitrator is not required to make the disclosures required by this

standard if he or she reasonably believes that the arbitration is not a consumer arbitration based on reasonable reliance on a consumer party's representation that the arbitration is not a consumer arbitration.

(b) [Additional disclosures required] In addition to the disclosures required under standard 7, in a consumer arbitration as defined in standard 2 in which a dispute resolution provider organization is coordinating, administering, or providing the arbitration services, a person who is nominated or appointed as an arbitrator on or after January 1, 2003 must disclose the following within the time and in the same manner as the disclosures required under standard 7(c):

(1) *(Relationships between the provider organization and party or lawyer in arbitration)* Any significant past, present, or currently expected financial or professional relationship or affiliation between the administering dispute resolution provider organization and a party or lawyer in the arbitration. Information that must be disclosed under this standard includes:

(A) A party, a lawyer in the arbitration, or a law firm with which a lawyer in the arbitration is currently associated is a member of the provider organization.

(B) Within the preceding two years the provider organization has received a gift, bequest, or favor from a party, a lawyer in the arbitration, or a law firm with which a lawyer in the arbitration is currently associated.

(C) The provider organization has entered into, or the arbitrator currently expects that the provider organization will enter into, an agreement or relationship with any party or lawyer in the arbitration or a law firm with which a lawyer in the arbitration is currently associated under which the provider organization will administer, coordinate, or provide dispute resolution services in other non-collective bargaining matters or will provide other consulting services for that party, lawyer, or law firm.

(D) The provider organization is coordinating, administering, or providing dispute resolution services or has coordinated, administered, or provided such services in another pending or prior noncollective bargaining case in which a party or lawyer

in the arbitration was a party or a lawyer. For purposes of this paragraph, "prior case" means a case in which the dispute resolution neutral affiliated with the provider organization concluded his or her service within the two years before the date of the arbitrator's proposed nomination or appointment, but does not include any case in which the dispute resolution neutral concluded his or her service before July 1, 2002.

(2) (*Case information*) If the provider organization is acting or has acted in any of the capacities described in paragraph (1)(D), the arbitrator must disclose:

(A) The names of the parties in each prior or pending case and, where applicable, the name of the attorney in the current arbitration who is involved in the pending case or who was involved in the prior case;

(B) The type of dispute resolution services (arbitration, mediation, reference, etc.) coordinated, administered, or provided by the provider organization in the case; and

(C) In each prior case in which a dispute resolution neutral affiliated with the provider organization rendered a decision as an arbitrator, a temporary judge appointed under article VI, § 4 of the California Constitution, or a referee appointed under Code of Civil Procedure sections 638 or 639, the date of the decision, the prevailing party, the amount of monetary damages awarded, if any, and the names of the parties' attorneys.

(3) (*Summary of case information*) If the total number of cases disclosed under paragraph (1)(D) is greater than five, the arbitrator must also provide a summary of these cases that states:

(1) The number of pending cases in which the provider organization is currently providing each type of dispute resolution services;

(1) The number of prior cases in which the provider organization previously provided each type of dispute resolution services;

(1) The number of such prior cases in which a neutral affiliated with the provider organization rendered a decision as an arbitrator, a temporary judge, or a referee; and

(1) The number of prior cases in which the party to the current arbitration or the party represented by the lawyer in the current arbitration was the prevailing party.

(c) [Relationship between provider organization and arbitrator]. If a relationship or affiliation is disclosed under paragraph (b), the arbitrator must also provide information about the following:

(1) Any financial relationship or affiliation the arbitrator has with the provider organization other than receiving referrals of cases, including whether the arbitrator has a financial interest in the provider organization or is an employee of the provider organization;

(2) The provider organization's process and criteria for recruiting, screening, and training the panel of arbitrators from which the arbitrator in this case is to be selected;

(3) The provider organization's process for identifying, recommending, and selecting potential arbitrators for specific cases; and

(4) Any role the provider organization plays in ruling on requests for disqualification of the arbitrator.

(d) [Effective date] The provisions of this standard take effect on January 1, 2003. Persons who are serving in arbitrations in which they were appointed to serve as arbitrators before January 1, 2003, are not subject to this standard in those pending arbitrations.

Comment to Standard 8

This standard only applies in consumer arbitrations in which a dispute resolution provider organization is administering the arbitration. Like standard 7, this standard expands upon the existing statutory disclosure requirements. Code of Civil Procedure section 1281.95 requires arbitrators in certain construction defect arbitrations to make disclosures concerning relationships between their employers or arbitration services and the parties in the arbitration. This standard requires arbitrators in all consumer arbitrations to disclose any financial or professional relationship between the administering provider organization and any party, attorney, or law firm in the arbitration and, if any such relationship exists, then the arbitrator must also disclose his or her relationship with the dispute resolution provider organization. This standard does not require an arbitrator to disclose if the provider organization has a financial interest in a party or lawyer in the arbitration or if a party or lawyer in the arbitration has a financial interest in the provider organization because provider organizations are prohibited under Code of Civil Procedure section 1281.92 from administering any consumer arbitration where any such relationship exists.

Subdivision (b). Currently expected relationships or affiliations that must be disclosed include all relationships or affiliations that the arbitrator, at the time the disclosure is made, expects will be formed. For example, if the arbitrator knows that the administering provider organization has agreed in concept to enter into a business relationship with a party, but they have not yet signed a written agreement formalizing that relationship, this would be a "currently expected" relationship that the arbitrator would be required to disclose.

Standard 9. Arbitrators' duty to inform themselves about matters to be disclosed

(a) [General duty to inform him or herself] A person who is nominated or appointed as an arbitrator must make a reasonable effort to inform himself or herself of matters that must be disclosed under standards 7 and 8.

(b) [Obligation regarding extended family] An arbitrator can fulfill the obligation under this standard to inform himself or herself of relationships or other matters involving his or her extended family and former spouse that are required to be disclosed under standard 7 by:

(1) Seeking information about these relationships and matters from the members of his or her immediate family and any members of his or her extended family living in his or her household; and

(2) Declaring in writing that he or she has made the inquiry in (1).

(c) [Obligation regarding relationships with associates of lawyer in the arbitration] An arbitrator can fulfill the obligation under this standard to inform himself or herself of relationships with any lawyer associated in the practice of law with the lawyer in the arbitration that are required to be disclosed under standard 7 by:

(1) Informing the lawyer in the arbitration, in writing, of all such relationships within the arbitrator's knowledge and asking the lawyer if the lawyer is aware of any other such relationships;

(2) Declaring in writing that he or she has made the inquiry in (1) and attaching to this declaration copies of his or her inquiry and any response from the lawyer in the arbitration.

(d) [Obligation regarding service as a neutral other than an arbitrator before July 1, 2002] An arbitrator can fulfill the obligation under this standard to inform himself or herself of his or her service as a dispute

resolution neutral other than as an arbitrator in cases that commenced prior to July 1, 2002 by:

(1) Asking any dispute resolution provider organization that administered those prior services for this information; and

(2) Declaring in writing that he or she has made the inquiry in (1) and attaching to this declaration copies of his or her inquiry and any response from the provider organization.

(e) [Obligation regarding relationships with provider organization] An arbitrator can fulfill his or her obligation under this standard to inform himself or herself of the information that is required to be disclosed under standard 8 by:

(1) Asking the dispute resolution provider organization for this information; and

(2) Declaring in writing that he or she has made the inquiry in (1) and attaching to this declaration copies of his or her inquiry and any response from the provider organization.

Comment to Standard 9

This standard expands arbitrators existing duty of reasonable inquiry that applies with respect to financial interests under Code of Civil Procedure section 170.1(a)(3), to require arbitrators to make a reasonable effort to inform themselves about all matters that must be disclosed. This standard also clarifies what constitutes a reasonable effort by an arbitrator to inform himself or herself about specified matters, including relationships or other matters concerning his or her extended family and relationships with attorneys associated in the practice of law with the attorney in the arbitration (such as associates encompassed within the term "lawyer for a party").

Standard 10. Disqualification

(a) An arbitrator is disqualified if:

(1) The arbitrator fails to comply with his or her obligation to make disclosures and a party serves a notice of disqualification in the manner and within the time specified in Code of Civil Procedure section 1281.91;

(2) The arbitrator complies with his or her obligation to make disclosures within 10 calendar days of service of notice of the proposed nomination or appointment and, based on that disclosure,

a party serves a notice of disqualification in the manner and within the time specified in Code of Civil Procedure section 1281.91;

(3) The arbitrator makes a required disclosure more than 10 calendar days after service of notice of the proposed nomination or appointment and, based on that disclosure, a party serves a notice of disqualification in the manner and within the time specified in Code of Civil Procedure section 1281.91; or

(4) A party becomes aware that an arbitrator has made a material omission or material misrepresentation in his or her disclosure and, within 15 days after becoming aware of the omission or misrepresentation and within the time specified in Code of Civil Procedure section 1281.91(c), the party serves a notice of disqualification that clearly describes the material omission or material misrepresentation and how and when the party became aware of this omission or misrepresentation; or

(5) If any ground specified in Code of Civil Procedure section 170.1 exists and the party makes a demand that the arbitrator disqualify himself or herself in the manner and within the time specified in Code of Civil Procedure section 1281.91(d).

(b) For purposes of this standard, "obligation to make disclosure" means an arbitrator's obligation to make disclosures under standards 7 or 8 or Code of Civil Procedure section 1281.9.

(c) Notwithstanding any contrary request, consent, or waiver by the parties, an arbitrator must disqualify himself or herself if he or she concludes at any time during the arbitration that he or she is not able to conduct the arbitration impartially.

Comment to Standard 10

Code of Civil Procedure section 1281.91 already establishes requirements concerning disqualification of arbitrators. This standard does not eliminate or otherwise limit those requirements or change existing authority or procedures for challenging an arbitrator's failure to disqualify himself or herself. The provisions of subdivisions (a)(1), (2), and (5) restate existing disqualification procedures under section 1281.91; (b) and (d) when an arbitrator makes, or fails to make, initial disclosures or where a section 170.1 ground exists. The provisions of subdivisions (a)(3) and (4) clarify the requirements relating to disqualification based on disclosure made by the arbitrator after appointment or based on the discovery by the party of a material omission or misrepresentation in the arbitrator's disclosure.

Standard 11. Duty to refuse gift, bequest, or favor

(a) An arbitrator must not, under any circumstances, accept a gift, bequest, favor, or honoraria from a party or any other person or entity whose interests are reasonably likely to come before the arbitrator in the arbitration.

(b) From service of notice of appointment or appointment until two years after the conclusion of the arbitration, an arbitrator must not, under any circumstances, accept a gift, bequest, favor, or honoraria from a party or any other person or entity whose interests have come before the arbitrator in the arbitration.

(c) An arbitrator must discourage members of his or her family residing in his or her household from accepting a gift, bequest, favor, or honoraria that the arbitrator would be prohibited from accepting under subdivisions (a) or (b).

(d) This standard does not prohibit an arbitrator from demanding or receiving a fee for services or expenses.

Comment to Standard 11

Gifts and favors do not include any rebate or discount made available in the regular course of business to members of the public.

Standard 12. Duties and limitations regarding future professional relationships or employment

(a) [Offers as lawyer, expert witness, or consultant] From the time of appointment until the conclusion of the arbitration, an arbitrator must not entertain or accept any offers of employment or new professional relationships as a lawyer, an expert witness, or a consultant from a party or a lawyer for a party in the pending arbitration.

(b) [Offers for other employment or professional relationships] In addition to the disclosures required by standards 7 and 8, within ten calendar days of service of notice of the proposed nomination or appointment, a proposed arbitrator must disclose to all parties in writing if, while that arbitration is pending, he or she will entertain offers of employment or new professional relationships in any capacity other than as a lawyer, expert witness, or consultant from a party or a lawyer for a party, including offers to serve as a dispute resolution neutral in

another case. A party may disqualify the arbitrator based on this disclosure by serving a notice of disqualification in the manner and within the time specified in Code of Civil Procedure section 1281.91(b).

(c) [Acceptance of offers prohibited unless intent disclosed] If an arbitrator fails to make the disclosure required by subdivision (b) of this standard, from the time of appointment until the conclusion of the arbitration the arbitrator must not entertain or accept any such offers of employment or new professional relationships, including offers to serve as a dispute resolution neutral.

(d) [Relationships and use of confidential information related to the arbitrated case] An arbitrator must not at any time:

(1) Without the informed written consent of all parties, enter into any professional relationship or accept any professional employment as a lawyer, an expert witness, or a consultant relating to the case arbitrated; or

(2) Without the informed written consent of the party, enter into any professional relationship or accept employment in another matter in which information that he or she has received in confidence from a party by reason of serving as an arbitrator in a case is material.

Standard 13. Conduct of proceeding

(a) An arbitrator must conduct the arbitration fairly, promptly, and diligently and in accordance with the applicable law relating to the conduct of arbitration proceedings.

(b) In making the decision, an arbitrator must not be swayed by partisan interests, public clamor, or fear of criticism.

Comment to Standard 13

Subdivision (a). The arbitrator's duty to dispose of matters promptly and diligently must not take precedence over the arbitrator's duty to dispose of matters fairly.

Conducting the arbitration in a procedurally fair manner includes conducting a balanced process in which each party is given an opportunity to participate. When one but not all parties are unrepresented, an arbitrator must ensure that the party appearing without counsel has an adequate opportunity to be heard and involved. Conducting the arbitration promptly and diligently requires expeditious management of all stages of the proceeding and concluding the case as promptly as the circumstances reasonably permit. During an arbitration, an arbitrator may discuss the issues,

arguments, and evidence with the parties or their counsel, make interim rulings, and otherwise to control or direct the arbitration. This standard is not intended to restrict these activities.

The arbitrator's duty to uphold the integrity and fairness of the arbitration process includes an obligation to make reasonable efforts to prevent delaying tactics, harassment of any participant, or other abuse of the arbitration process. It is recognized, however, that the arbitrator's reasonable efforts may not successfully control all conduct of the participants.

For the general law relating to the conduct of arbitration proceedings, see chapter 3 of title 9 of part III of the Code of Civil Procedure, sections 1282–1284.2, relating to the conduct of arbitration proceedings. See also Code of Civil Procedure section 1286.2 concerning an arbitrator's unreasonable refusal to grant a continuance as grounds for *vacatur* of the award.

Standard 14. Ex parte communications

(a) An arbitrator must not initiate, permit, or consider any ex parte communications or consider other communications made to the arbitrator outside the presence of all of the parties concerning a pending or impending arbitration, except as permitted by this standard, by agreement of the parties, or by applicable law.

(b) An arbitrator may communicate with a party in the absence of other parties about administrative matters, such as setting the time and place of hearings or making other arrangements for the conduct of the proceedings, as long as the arbitrator reasonably believes that the communication will not result in a procedural or tactical advantage for any party. When such a discussion occurs, the arbitrator must promptly inform the other parties of the communication and must give the other parties an opportunity to respond before making any final determination concerning the matter discussed.

(c) An arbitrator may obtain the advice of a disinterested expert on the subject matter of the arbitration if the arbitrator notifies the parties of the person consulted and the substance of the advice and affords the parties a reasonable opportunity to respond.

Comment to Standard 14

See also Code of Civil Procedure sections 1282.2(e) regarding the arbitrator's authority to hear a matter when a party fails to appear and 1282.2(g) regarding the procedures that must be followed if an arbitrator intends to base an award on information not obtained at the hearing.

Standard 15. Confidentiality

(a) An arbitrator must not use or disclose information that he or she received in confidence by reason of serving as an arbitrator in a case to gain personal advantage. This duty applies from acceptance of appointment and continues after the conclusion of the arbitration.

(b) An arbitrator must not inform anyone of the award in advance of the time that the award is given to all parties. This standard does not prohibit an arbitrator from providing all parties with a tentative or draft decision for review or from providing an award to an assistant or to the provider organization that is coordinating, administering, or providing the arbitration services in the case for purposes of copying and distributing the award to all parties.

Standard 16. Compensation

(a) An arbitrator must not charge any fee for services or expenses that is in any way contingent on the result or outcome of the arbitration.

(b) Before accepting appointment, an arbitrator, a dispute resolution provider organization, or another person or entity acting on the arbitrator's behalf must inform all parties in writing of the terms and conditions of the arbitrator's compensation. This information must include any basis to be used in determining fees and any special fees for cancellation, research and preparation time, or other purposes.

Standard 17. Marketing

(a) An arbitrator must be truthful and accurate in marketing his or her services and must not make any representation that directly or indirectly implies favoritism or a specific outcome. An arbitrator must ensure that his or her personal marketing activities and any activities carried out on his or her behalf, including any activities of a provider organization with which the arbitrator is affiliated, comply with this requirement.

(b) An arbitrator must not solicit business from a participant in the arbitration while the arbitration is pending.

Comment to Standard 17

Subdivision (b). This provision is not intended to prohibit an arbitrator from accepting another arbitration from a party or attorney in the arbitration while the first matter is pending, as long as the arbitrator complies with the provisions of standard 12 and there was no express solicitation of this business by the arbitrator.

Drafter's Notes

Standards 1–17 implement Code of Civil Procedure section 1281.85, which requires the Judicial Council to adopt ethics standards for all neutral arbitrators serving in arbitrations pursuant to an arbitration agreement. Among other things, they address the disclosure of interests, relationships, or affiliations that may constitute conflicts of interest, the acceptance of gifts, the establishment of future professional relationships, ex-parte communication, fees, and marketing.

Assembly Bill No. 2504

CHAPTER 1094

An act to amend Sections 170.1 and 1281.9 of the Code of Civil Procedure, relating to arbitration.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2504, Jackson. Judges: arbitration.

Existing law sets forth the grounds for the required disqualification of a judge, as specified.

This bill would require the disqualification of a judge who has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral, as defined, or is participating in, or, within the last two years, has participated in, discussions regarding such prospective employment or other service, and further, specified conditions apply.

Existing law requires a proposed neutral arbitrator in an arbitration pursuant to an arbitration agreement to disclose, among other things, the existence of grounds for the required disqualification of a judge.

This bill require disclosure of whether or not an arrangement or discussion described above applies.

The people of the State of California do enact as follows:

SECTION 1. Section 170.1 of the Code of Civil Procedure is amended to read:

170.1. (a) A judge shall be disqualified if any one or more of the following is true:

(1) The judge has personal knowledge of disputed evidentiary facts concerning the proceeding.

A judge shall be deemed to have personal knowledge within the meaning of this paragraph if the judge, or the spouse of the judge, or a person within the third degree of relationship to either of them, or the spouse of such a person is to the judge's knowledge likely to be a material witness in the proceeding.

(2) The judge served as a lawyer in the proceeding, or in any other proceeding involving the same issues he or she served as a lawyer for any party in the present proceeding or gave advice to any party in the present proceeding upon any matter involved in the action or proceeding.

A judge shall be deemed to have served as a lawyer in the proceeding if within the past two years:

(A) A party to the proceeding or an officer, director, or trustee of a party was a client of the judge when the judge was in the private practice of law or a client of a lawyer with whom the judge was associated in the private practice of law; or

(B) A lawyer in the proceeding was associated in the private practice of law with the judge.

A judge who served as a lawyer for or officer of a public agency which is a party to the proceeding shall be deemed to have served as a lawyer in the proceeding if he or she personally advised or in any way represented the public agency concerning the factual or legal issues in the proceeding.

(3) The judge has a financial interest in the subject matter in a proceeding or in a party to the proceeding.

A judge shall be deemed to have a financial interest within the meaning of this paragraph if:

(A) A spouse or minor child living in the household has a financial interest; or

(B) The judge or the spouse of the judge is a fiduciary who has a financial interest.

A judge has a duty to make reasonable efforts to inform himself or herself about his or her personal and fiduciary interests and those of his or her spouse and the personal financial interests of children living in the household.

(4) The judge, or the spouse of the judge, or a person within the third degree of relationship to either of them, or the spouse of such a person is a party to the proceeding or an officer, director, or trustee of a party.

(5) A lawyer or a spouse of a lawyer in the proceeding is the spouse, former spouse, child, sibling, or parent of the judge or the judge's spouse or if such a person is associated in the private practice of law with a lawyer in the proceeding.

(6) For any reason (A) the judge believes his or her recusal would further the interests of justice, (B) the judge believes there is a substantial doubt as to his or her capacity to be impartial, or (C) a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial. Bias or prejudice towards a lawyer in the proceeding may be grounds for disqualification.

(7) By reason of permanent or temporary physical impairment, the judge is unable to properly perceive the evidence or is unable to properly conduct the proceeding.

(8) The judge has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral

or is participating in, or, within the last two years has participated in, discussions regarding such prospective employment or service, and either of the following applies:

(A) The arrangement is, or the discussion was, with a party to the proceeding.

(B) The matter before the judge includes issues relating to the enforcement of an agreement to submit a dispute to alternative dispute resolution or the appointment or use of a dispute resolution neutral.

For purposes of this paragraph, ''party'' includes the parent, subsidiary, or other legal affiliate of any entity that is a party and is involved in the transaction, contract, or facts that gave rise to the issues subject to the proceeding.

For purposes of this paragraph, a ''dispute resolution neutral'' means an arbitrator, mediator, temporary judge appointed under Section 21 of Article VI of the California Constitution, referee appointed under Section 638 or 639, special master, neutral evaluator, settlement officer, or settlement facilitator.

(b) A judge before whom a proceeding was tried or heard shall be disqualified from participating in any appellate review of that proceeding.

(c) At the request of a party or on its own motion an appellate court shall consider whether in the interests of justice it should direct that further proceedings be heard before a trial judge other than the judge whose judgment or order was reviewed by the appellate court.

SEC. 2. Section 1281.9 of the Code of Civil Procedure is amended to read:

1281.9. (a) In any arbitration pursuant to an arbitration agreement, when a person is to serve as a neutral arbitrator, the proposed neutral arbitrator shall disclose all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed neutral arbitrator would be able to be impartial, including all of the following:

(1) The existence of any ground specified in Section 170.1 for disqualification of a judge. For purposes of paragraph (8) of subdivision (a) of Section 170.1, the proposed neutral arbitrator shall disclose whether or not he or she has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last two years, has participated in, discussions regarding such prospective employment or service with a party to the proceeding.

(2) Any matters required to be disclosed by the ethics standards for neutral arbitrators adopted by the Judicial Council pursuant to this chapter.

(3) The names of the parties to all prior or pending noncollective bargaining cases in which the proposed neutral arbitrator served or is serving as a party arbitrator for any party to the arbitration proceeding or for a lawyer for a party and the results of each case arbitrated to conclusion, including the date of the arbitration award, identification of the prevailing party, the names of the parties' attorneys and the amount of monetary damages awarded, if any. In order to preserve confidentiality, it shall be sufficient to give the name of any party who is not a party to the pending arbitration as ''claimant'' or ''respondent'' if the party is an individual and not a business or corporate entity.

(4) The names of the parties to all prior or pending noncollective bargaining cases involving any party to the arbitration or lawyer for a party for which the proposed neutral arbitrator served or is serving as neutral arbitrator, and the results of each case arbitrated to conclusion, including the date of the arbitration award, identification of the prevailing party, the names of the parties' attorneys and the amount of monetary damages awarded, if any. In order to preserve confidentiality, it shall be sufficient to give the name of any party not a party to the pending arbitration as ''claimant'' or ''respondent'' if the party is an individual and not a business or corporate entity.

(5) Any attorney-client relationship the proposed neutral arbitrator has or had with any party or lawyer for a party to the arbitration proceeding.

(6) Any professional or significant personal relationship the proposed neutral arbitrator or his or her spouse or minor child living in the household has or has had with any party to the arbitration proceeding or lawyer for a party.

(b) Subject only to the disclosure requirements of law, the proposed neutral arbitrator shall disclose all matters required to be disclosed pursuant to this section to all parties in writing within 10 calendar days of service of notice of the proposed nomination or appointment.

(c) For purposes of this section, ''lawyer for a party'' includes any lawyer or law firm currently associated in the practice of law with the lawyer hired to represent a party.

(d) For purposes of this section, ''prior cases'' means noncollective bargaining cases in which an arbitration award was rendered within five years prior to the date of the proposed nomination or appointment.

(e) For purposes of this section, ''any arbitration'' does not include an arbitration conducted pursuant to the terms of a public or private sector collective bargaining agreement.

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Assembly Bill No. 2574

CHAPTER 952

An act to add Section 1281.92 to the Code of Civil Procedure, relating to arbitration.

[Approved by Governor September 26, 2002. Filed with Secretary of State September 27, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2574, Harman. Arbitration: conflicts of interest.

Existing law provides that in any arbitration pursuant to an arbitration agreement, if a person is to serve as a neutral arbitrator, the proposed neutral arbitrator is required to disclose all matters that would cause a person aware of the facts to reasonably entertain a doubt that the proposed neutral arbitrator would be able to be impartial, as specified.

This bill would prohibit a private arbitration company from administering a consumer arbitration, or providing any other services related to a consumer arbitration, if the company has, or within the preceding year has had, a specified financial interest, in any party or attorney for a party. The bill would impose similar limitations on the provision of services by private arbitration companies based on the financial interests of any party or attorney for a party in the private arbitration company. The bill would state that its provisions become operative on January 1, 2003.

The people of the State of California do enact as follows:

SECTION 1. Section 1281.92 is added to the Code of Civil Procedure, to read:

1281.92. (a) No private arbitration company may administer a consumer arbitration, or provide any other services related to a consumer arbitration, if the company has, or within the preceding year has had, a financial interest, as defined in Section 170.5, in any party or attorney for a party.

(b) No private arbitration company may administer a consumer arbitration, or provide any other services related to a consumer arbitration, if any party or attorney for a party has, or within the preceding year has had, any type of financial interest in the private arbitration company.

(c) This section shall operate only prospectively so as not to prohibit the administration of consumer arbitrations on the basis of financial interests held prior to January 1, 2003.

(d) This section applies to all consumer arbitration agreements subject to this article, and to all consumer arbitration proceedings conducted in California.

(e) This section shall become operative on January 1, 2003.

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Assembly Bill No. 2656

CHAPTER 1158

An act to add Section 1281.96 to the Code of Civil Procedure, relating to arbitration.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2656, Corbett. Arbitration: private arbitration companies.

Existing law regulates arbitration conducted pursuant to an arbitration agreement, as specified.

This bill would require a private arbitration company involved in consumer arbitration cases to make certain information regarding those cases available to the public, as specified, and would provide that no private arbitration company shall have any liability for collecting, publishing, or distributing the information.

The people of the State of California do enact as follows:

SECTION 1. Section 1281.96 is added to the Code of Civil Procedure, to read:

1281.96. (a) Except as provided in paragraph (2) of subdivision (b), any private arbitration company that administers or is otherwise involved in, a consumer arbitration, shall collect, publish at least quarterly, and make available to the public in a computer-searchable format, which shall be accessible at the Internet Web site of the private arbitration company, if any, and on paper upon request, all of the following information regarding each consumer arbitration within the preceding five years:

(1) The name of the nonconsumer party, if the nonconsumer party is a corporation or other business entity.

(2) The type of dispute involved, including goods, banking, insurance, health care, employment, and, if it involves employment, the amount of the employee's annual wage divided into the following ranges: less than one hundred thousand dollars ($100,000), one hundred thousand dollars ($100,000) to two hundred fifty thousand dollars ($250,000), inclusive, and over two hundred fifty thousand dollars ($250,000).

(3) Whether the consumer or nonconsumer party was the prevailing party.

(4) On how many occasions, if any, the nonconsumer party has previously been a party in an arbitration or mediation administered by the private arbitration company.

(5) Whether the consumer party was represented by an attorney.

(6) The date the private arbitration company received the demand for arbitration, the date the arbitrator was appointed, and the date of disposition by the arbitrator or private arbitration company.

(7) The type of disposition of the dispute, if known, including withdrawal, abandonment, settlement, award after hearing, award without hearing, default, or dismissal without hearing.

(8) The amount of the claim, the amount of the award, and any other relief granted, if any.

(9) The name of the arbitrator, his or her total fee for the case, and the percentage of the arbitrator's fee allocated to each party.

(b) (1) If the information required by subdivision (a) is provided by the private arbitration company in a computer-searchable format at the company's Internet Web site and may be downloaded without any fee, the company may charge the actual cost of copying to any person who requests the information on paper. If the information required by subdivision (a) is not accessible by the Internet, the company shall provide that information without charge to any person who requests the information on paper.

(2) Notwithstanding paragraph (1), a private arbitration company that receives funding pursuant to Chapter 8 (commencing with Section 465) of Division 1 of the Business and Professions Code, and that administers or conducts fewer than 50 consumer arbitrations per year may collect and publish the information required by subdivision (a) semiannually, provide the information only on paper, and charge the actual cost of copying.

(c) This section shall apply to any consumer arbitration commenced on or after January 1, 2003.

(d) No private arbitration company shall have any liability for collecting, publishing, or distributing the information required by this section.

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Commentator	Section	Summary of Comment	Staff Response
Rob Cartwright, Jr. (Consumer Attorneys of California)	General Support	Consumer Attorneys of California strongly supports the standards as issued.	No response required.
Anthony David	General Support	It is absolutely imperative that the ethics standards proposed be adopted.	No response required.
State Bar Committee on Professional Responsibility and Conduct	General Support	COPRAC supports the general purpose of the standards and agree that it is critical that parties who participate in arbitrations feel that the arbitrator is qualified and neutral. COPRAC is also well aware of how difficult it is to craft rules such as the Standards	No response required.
James C. Sturdevant	General Support	Mr. Sturdevant strongly supports the proposed standards as issued.	No response required.
M. Scott Donahey (Tomlinson, Zisko, Morosoli & Maser)	General Addressing Concerns about Use of Arbitration Indirectly, Through Standards	The standards fail to address the problems perceived in the arbitration of consumer disputes and attempt to circumvent confrontation of those problems by attacking the "messenger." The standards should be suspended and the perceived problems confronted directly.	Staff agrees that the standards should focus on establishing appropriate ethics guidelines for arbitrators, not on trying to indirectly address concerns about the use of arbitration process or agreements to arbitrate. However, staff also believes that it is appropriate to consider whether different arbitrator conduct is warranted under different arbitration circumstances. Based on the above premise, currently both standard 7(b)(12) and standard 10(d) establish differential obligations for arbitrators where the arbitration is taking place under a contract of adhesion. In light of commentators' concerns, staff is recommending that differential obligations established by 7(b)(12) remain in the standards, but be amended to make them easier to understand and is recommending that the provisions in standard 10(d) that relate only to consumer arbitrations be deleted.
John Kagel (04-02)	General Addressing Concerns about Use of Arbitration Indirectly, Through Standards	Mr. Kagel opposes mandatory arbitration, but believes that if there is to be such, it should be handled by those who know the arbitration process. He urges the Council to consider carefully whether there should be special "ethical" provisions for these kinds of cases—as opposed to the highly detailed standards for normal contact arbitration--or whether to leave it to the legislature to expressly state its will.	Please see response to comment of Mr. Donahey, above.
Michael Roster (Golden West Financial Corp.) (4-3-02)	General Addressing Concerns about Use of Arbitration	<u>If we want to eliminate arbitration in California, then do so by legislation or regulation</u> Businesses and consumers should have an opportunity to present a dispute to an independent and hopefully wise third party quickly, at little or no cost to consumers, and without	Please see response to comment of Mr. Donahey, above. The new requirements recommended by staff and adopted by the council in these standards are intended

Commentator	Section	Summary of Comment	Staff Response
	Indirectly, Through Standards	necessity of lawyers, for a prompt decision. If some businesses and/or ADR providers have abused the system, there should be legislation or regulation to address the specific abuses. Alternatively, if California wants to eliminate ADR, we should simply adopt legislation to that effect. In the process of remedying abuses of ADR in the consumer area, businesses should be left alone to decide what they do and do not wish to do when resolving disputes among themselves. It will now be more difficult for California lawyers to get the other side to agree on the selection of California law, adding more costs and difficulties for California-based companies.	to promote the integrity and fairness of the arbitration process, not to eliminate arbitration. Staff believes that the benefits of these new requirements outweigh their associated burdens and would not have recommended their adoption had they concluded otherwise.
Francis O. Spalding **(02-22-02)**	General Addressing Concerns about Use of Arbitration Indirectly, Through Standards	Concerns about adhesive arbitration contracts cannot be cured directly because of the FAA. Query whether these standards then will be considered to conflict with the FAA.	Please see response to comment of Mr. Donahey, above. While there may be some risk of federal preemption of some aspects of these standards in individual cases, staff do not believe this risk warrants deleting these standards.
M. Scott Donahey (Tomlinson, Zisko, Morosoli & Maser)	General Overall Negative Impact on Arbitration	If the judicial council's mandate was to destroy the arbitration system in California, then it is on the way to meeting that mandate. If it was to protect consumers in the arbitration context, then it is not only a complete failure, it actually leaves the consumers worse off than before the intervention.	The new requirements recommended by staff and adopted by the council in these standards are intended to promote the integrity and fairness of the arbitration process, not to eliminate arbitration. Some burdens on arbitrators and the arbitration process will inevitably result from the imposition of new obligations through these standards. Staff believes that the Legislature understood such new burdens would be imposed when it directed the adoption of a mandatory set of ethics standards for contractual arbitrators and that the council weighed these burdens when adopting the standards. Staff believes that the benefits of these new requirements outweigh their associated burdens and would not have recommended their adoption had they concluded otherwise. Based on comments received, however, staff is proposing amendments to the standards to reduce some of these burdens, including: • Limiting disclosures concerning dispute resolution services other than arbitration to cases in which the arbitrator was or will be compensated for these services; and • Eliminating the requirement in 10(d) that arbitrators in consumer arbitrations obtain party consent before accepting additional employment from a party or attorney while the arbitration is pending.

Commentator	Section	Summary of Comment	Staff Response
			Staff believe that these and other recommended changes to the standards should address Mr. Donahey's concerns to some degree.
Keith Maurer (National Arbitration Forum)	General Overall Negative Impact on Arbitration	The Standards have resulted in an adverse impact on arbitrators and parties to arbitrations, including consumers.	Please see response to comment of Mr. Donahey, above.
C. David Serena	General Overall Negative Impact on Arbitration	Standards attack and destroy the foundation of private Arbitrations under the guise of putting more fairness into the process or at least the appearance of more fairness. Standards attack the premises that arbitrations should be 1) timely, (2) cost effective, and (3) protective of privacy. • Delay during selection process (particularly when arbitrator must obtain consent to accept another case) • Additional file checking, communication and limitation on future business will take time and cost money which will be passed along to the ultimate consumer • Parties right to privacy is breached merely by communicating to third parties the information that parties are involved in the arbitration. A professional arbitrator must be fair, or he/she is out of business (i.e. market will regulate conduct) Solution to most issues is to look at the proposed arbitrator's track record, which is available under the law, and find out if the arbitrator will continue to accept employment from either side during the pendency. If so, assume he/she will be getting more business from one side or the other, and make the decision at that point.	Please see response to comment of Mr. Donahey, above. Staff believe that the recommended deletion of standard 10(d) will address the commentator's principal concerns regarding delay during the selection process, limitation on future business, and privacy. Staff believe that the disclosure requirements help arbitration participants ascertain the arbitrator's track record, whether an arbitrator will accept additional cases, and other information helpful in deciding whether they believe an arbitrator will fairly determine their case.
Kathryn Page Camp (National Futures Association)	General Impact on Availability of Arbitrators/ Arbitration	Certain provisions may make it difficult to find qualified arbitrators, especially when a customer requests a Member panel with futures industry knowledge, and National Futures Association may have little choice but to move those cases out of California.	The standards require arbitrators to disclose matters that might reasonably raise a question concerning their impartiality, but leave it to the parties to determine whether to disqualify an arbitrator based upon such disclosures. Staff believes that parties who request a Member panel are unlikely to disqualify a proposed arbitrator simply because he or she has industry relationships, but believe these parties should receive the disclosures required by the standards so they can make an informed decision whether to do so.
M. Scott Donahey	General Impact on	The standards impose onerous duties and costs on arbitrators that will cause many to stop doing business in California.	As noted above, some burdens on arbitrators and the arbitration process will inevitably result from the

Commentator	Section	Summary of Comment	Staff Response
(Tomlinson, Zisko, Morosoli & Maser)	Availability of Arbitrators/ Arbitration		imposition of new obligations through these standards. Staff believes that the Legislature understood such new burdens would be imposed when it directed the adoption of a mandatory set of ethics standards for contractual arbitrators. Staff has reviewed each of the new obligations imposed by these standards to determine: 1) whether the standard creates unanticipated burdens or risks; 2) can the standard be amended in any way to reduce associated burdens and risks while achieving the same benefits; and 3) are the burdens and risks outweighed by the potential benefits of the standard in terms of ensuring the integrity and fairness of contractual arbitration proceedings in California. Based on this review, as noted above, we are recommending several substantive changes to the standards which should address some of Mr. Donahay's concerns. Some arbitrators may nevertheless decide to stop conducting arbitrations in California, or to stop accepting certain types of cases. We do not believe that this is likely to appreciably impact the availability of high-quality arbitrators. If information subsequently indicates that this regulatory scheme has appreciably impacted the availability of arbitrators, the Legislature and council can take steps to address this impact.
John Kagel (04-02)	General Impact on Availability of Arbitrators/ Arbitration	If the standards are adopted, veteran arbitrators may shun consumer arbitrations, leaving these to individuals with little or no arbitration experience, eroding confidence in arbitration.	Please see response to comment of Mr. Donahey, above. As noted above, staff is recommending the deletion of 10(d), one of the two provisions that established additional special obligations on arbitrators in consumer arbitrations, which should address some of Mr. Kagel's concerns.
Luella Nelson (individually)	General Impact on Availability of Arbitrators/ Arbitration	The disclosure requirements have caused some arbitrators to decline cases, despite the express wishes of both parties to proceed with the chosen arbitrator.	Please see response to comment of Mr. Donahey, above. As suggested by Ms. Nelson, we are recommending amendments to clarify that prior service in a collective bargaining case is not required to be disclosed, which should address some of her concerns.
Deborah Rothman	General Impact on Availability of Arbitrators/ Arbitration	The Standards are causing many professional neutrals to refrain from taking contractual arbitrations until the decisional waters become less muddy, while inexperienced arbitrators rush in, at the expense of public confidence in the arbitration process.	Please see response to comment of Mr. Donahey, above. We are also recommending many amendments to clarify the standards, which should address some of Ms. Rothman's concerns.
Kathryn Page Camp (National Futures	General Impact on Costs	National Futures Association agrees with most of the provisions in the standards, but believes some provisions go farther than necessary to ensure neutrality, and is concerned that those provisions may have a negative impact on it's ability to provide a	Please see response to comment of Mr. Donahey, above and the responses to Ms. Camp's specific comments below.

Commentator	Section	Summary of Comment	Staff Response
Association)		cost-effective, nation-wide arbitration forum for customer complaints.	
Luella Nelson (individually)	General Impact on Costs	Parties who prefer arbitration to other forums should not have unnecessary costs and uncertainties imposed on them. Post-award disputes concerning what the arbitrator knew and when s/he knew it are inevitable and expensive.	Please see response to comment of Mr. Donahey, above. Staff agree that arbitration users should not have unnecessary costs imposed on them and are recommending many amendments to clarify the standards and to reduce some of the associated burdens, which should address some of Ms. Rothman's concerns.
Kenneth E. Owen	General Impact on Costs & Timeliness	The arbitration system must be fair and free of interest by the arbitrator in either the subject matter or the parties (or their representatives). Several of the specific standards in many or most circumstances are impossible to achieve completely and, unnecessary given the general principles set forth in Standards 5 and 6. The application of some of these standards will inevitably increase the costs of arbitration and time to award, and the inevitable failure of complete disclosure will lead to uncertainty as to the finality of the award and to additional costs incurred in an attack on awards in the courts.	Staff agree that the arbitrators and the arbitration system must be fair and free of conflicts of interest in order to maintain legitimacy and be effective. We note that many of the specific disclosure obligations which Mr. Owen believes are unnecessary in light of standards 5 and 6 and the standard for vacatur based on a failure to make a disclosure were established by the Legislature to promote fairness and prevent such conflicts. Because these requirements are established by statute, not these standards, the council cannot change them by amending the ethics standards. We believe that the Legislature is the correct audience for these concerns, and recommend that this comment be transmitted to the appropriate members of the Legislature. Please also see response to comment of Mr. Donahey, above and the responses to Mr. Owen's specific comments below.
C. David Serena	General Impact on Costs & Timeliness	Delay during selection process (particularly when arbitrator must obtain consent to accept another case) Additional file checking, communication and limitation on future business will take time and cost money which will be passed along to the ultimate consumer	Please see response to comment of Mr. Donahey, above. This commentator's concern about the delay while an arbitrator seeks consent to accept another case would be addressed by the recommended deletion of standard 10(d).
Kathryn Page Camp (National Futures Association)	General Disclosure Plus Disqualification	Since all of the disclosure requirements are automatic disqualifications if a party objects, parties may object for the sole purpose of delay or other tactical advantage.	While the standards identify matters that must be disclosed, automatic disqualification upon objection by a party is established by Code of Civil Procedure section 1281.91. We therefore believe that the Legislature is the correct audience for these concerns, and recommend that this comment be transmitted to the appropriate members of the Legislature.
Norman Brand	General Impact on Finality	The standards provide no sanctions for the neutral that breaches them, but instead punish the party who has prevailed by creating new grounds for vacatur which were proposed in legislation and unable to pass out of committee.	The Legislature did not establish or authorize the council to establish new penalties or new methods to enforce these standards. The Legislature made the policy determination to rely on the existing enforcement

Commentator	Section	Summary of Comment	Staff Response
		The number of vacature motions and appeals from rulings on them is highly likely to increase. This increased burden on the courts is not likely to advantage consumers, since it favors only losing parties with deep pockets. The standards significantly reduce the finality of arbitration awards, particularly because a party may always challenge whether an arbitrator "made a reasonable effort to inform himself" of matters that could cause doubts about his impartiality. Standard 7d1 does not significantly mitigate this problem, because the arbitrator can still be accused of failing to seek the proper information from all members of his household, or of failing to disclose "all the information" within his knowledge**.** The lack of requirement that a technical failure to disclose affected impartiality of the arbitrator can work a serious injustice on the winning party. The standards have fundamental flaws that will have serious - albeit unintended consequences. The Judicial Council should suspend the operation of these standards -in particular Standards 7 & 10 --and undertake a far more measured examination of the problems they purport to solve.	mechanisms embodied in the arbitration statutes and in caselaw: disqualification of the arbitrator or vacatur of the arbitrator's award. The Legislature did add to the statutory grounds for vacatur a new provision specifically authorizing vacatur if an arbitrator fails to disclose a ground for disqualification of which the arbitrator was aware at the time he or she was supposed to make disclosures, but the bill enacting this new statutory ground indicates that it is intended to codify existing caselaw concerning vacatur based upon an arbitrator's failure to make disclosures. Although these standards do require the disclosure of additional matters, staff believe that the primary focus of Mr. Brand's concerns is the breadth of the new statutory ground for vacating an arbitration award based on an arbitrator's a failure to make a required disclosure. These comments raise important concerns about this new vacatur provision, however, the council has no authority to modify the statutory grounds for vacatur. That authority lies with the Legislature. We therefore believe that the Legislature is the correct audience for these concerns, and recommend that this comment be transmitted to the appropriate members of the Legislature. Staff do not believe it is appropriate or permissible for the council to suspend operation of the standards. Code of Civil Procedure section 1281.85 requires that, beginning July 1, 2002, neutral arbitrators comply with the ethics standards for arbitrators adopted by the Judicial Council and that the council adopt these standards effective July 1, 2002. Suspending operation of the standards would potentially place both arbitrators and the council in the position of violating statutory requirements. Nor do we believe that suspension of standard 7 address Mr. Brand's concerns, as both all of the statutory disclosure obligations and the statutory ground for vacating an arbitration award based on a arbitrator's failure to make a disclosure would remain in effect. Staff is recommending deletion of subdivision 10(d).
M. Scott	General	The standards constitute an invitation to the well-heeled to	Please see response to comments of Mr. Brand, above.

Commentator	Section	Summary of Comment	Staff Response
Donahey (Tomlinson, Zisko, Morosoli & Maser)	Impact on Finality	litigate every arbitral award and force successful consumers to settle for less than that to which they are entitled. The standards do not impose ethical obligations upon the neutral that if violated could lead to removal and/or exposure to liability, but rather create grounds for vacature for inadvertent and unintended violation. There is no requirement that a violation of the disclosure standards actually prejudice the complaining party.	
Var Fox (Judicate West)	General Impact on Finality	The process may be defeated because of a non-prevailing party's ability to attack the award based upon a failure to disclose unrelated to the merits of the case.	Please see response to comments of Mr. Brand, above.
Ruth V. Glick (California Dispute Resolution Council)	General Impact on Finality	There should be a criterion of materiality [concerning disclosure], which could then be used by court when faced with a challenge to vacate for non-compliance with the standards.	Please see response to comments of Mr. Brand, above.
Louise A. LaMothe	General Impact on Finality	Since the standards lack any materiality requirement, they simply give litigants an opportunity to delay the proceedings or worse, overturn an award.	Please see response to comment of Mr. Brand, above.
Kenneth E. Owen	General Impact on Finality	Inevitable failure of complete disclosure will lead to uncertainty as to the finality of the award.	Please see response to comments of Mr. Brand, above.
Deborah Rothman	General Impact on Finality	The Standards create the potential for abuse by a losing party who will be able to utilize a de minimis failure to disclose to delay enforcement of the Award.	Please see response to comment of Mr. Brand, above.
Robert M. Shafton	General Impact on Finality	Vacature does nothing to protect the public or to encourage the use of ADR methods and procedures. Adversaries are seeking their "day before a final decider" and most importantly seeking finality. The standards undermine this finality and could unfairly punish all participants in the process. Mr. Shafton requests that the Council reevaluate its position on these standards.	Please see response to comment of Mr. Brand, above.
Luella Nelson (individually)	General Dense/ Confusing Language	The standards contain confusing, incomplete and sometimes unexplained provisions regarding what is excluded and what must be disclosed. The standards contain "untidy language" beyond the untidiness inherent in the statutory language. The standards should be consistent in their use of terms, and	Staff agree that some of the standards, particularly standard 7, are very dense and complicated. Staff also agree that all of the standards should be edited wherever possible to make them easier to read and understand. We have reviewed all of the standards and are proposing a number of changes aimed at reducing the complexity and improving the clarity of the standards, including the following:

Commentator	Section	Summary of Comment	Staff Response
		comments should discuss reasons for any variation (e.g. "lawyer hired to represent a party" versus "lawyer for a party"). (Specific Ms. Nelson's comments under 7b4, 7b5 and 10.) Neutral arbitrators should be referred to as "non-party arbitrators" throughout (instead of simply as arbitrators), to avoid confusion with party arbitrators and with neutral arbitrators in the kinds of cases excluded from the standards. Mechanisms are necessary to inform non-lawyer arbitrators and lawyer arbitrators from other states (as well as California attorney arbitrators) about the Standards.	• Breaking standard 7 up into three separate standards; • Using a similar structure and language in all three subdivisions of standard 7 that require disclosure of information about pending or prior cases; • Adding the phrase "who are subject to these standards" to modify "arbitrator" in the first sentence of Standard 1 and in the definition of "arbitrator" in standard 2, to clarify, as suggested by this commentator, who the standards apply to; and • Modifying the definitions of "lawyer in the arbitration" and "lawyer for a party" to use similar language and to more closely track the language used in the statutory definition of "lawyer for a party" and making other changes to references to lawyers in the standards as suggested by this commentator. We believe Ms. Nelson's concerns will be addressed, at least in part, by these changes.
Luella Nelson (obo San Francisco Bar Labor & Employment Section)	General Dense/ Confusing Language	The term "noncollective bargaining cases" should be inserted where appropriate in Standards 7(b)(4) and (5) and 10(b)-(d) to make clear that an arbitrator is not required to make disclosures with regard to prior or prospective engagements arising form disputes under collective bargaining agreements.	We are recommending adding "non-collective bargaining" before references to "cases" and "arbitrations," as suggested
Francis O. Spalding	General Dense/ Confusing Language	The standards are unnecessarily long and confusing.	Please see response to comment of Ms. Nelson (individually), above.
Frances L. Diaz	General Arbitrator Liability/ Immunity	Standards need to be clear that no arbitrator has "absolute" immunity Ethics in arbitration should require disclosure by the arbitration provider in the initial contract of hire regarding professional liability insurance. Language in contracts with consumers which shields the arbitration provider from liability for professional negligence and/or breach of contract should be prohibited in a separate standard.	Staff believes that these standards cannot determine whether or to what extent an arbitrator or a provider organization may be held civilly liable or has immunity, and believes these issues must be resolved by the Legislature through statute or the courts through caselaw. However, staff is recommending that the standard 1 be amended to state that the standards are not intended either to affect any existing cause of action or to create any new cause of action.
Var Fox (Judicate West)	General Arbitrator Liability/ Immunity	A failure to disclose a required disclosure item, even if non-intentional could conceivably result in a liability or malpractice situation.	Please see response to comment of Ms. Diaz, above.
Ruth V. Glick	General	Standards were drafted on the premise that arbitrators should	Please see response to comment of Ms. Diaz, above.

Commentator	Section	Summary of Comment	Staff Response
(California Dispute Resolution Council)	Arbitrator Liability/ Immunity	be subject to the same ethical standards and practices as judges, however there are significant differences between judges and arbitrators, including oversight, selection and personal liability. It should be made clear that the intent of the standards is to disqualify an arbitrator and/or vacate an award for non-compliance; not to give license for losing parties for civil claims against the arbitrator.	
Lewis L. Maltby (National Workrights Institute)	General Arbitrator Liability/ Immunity	The arbitrator might be subject to disgorgement of fees, liable for substantial civil damages, or subject to disbarment or lesser penalties. Putting arbitrators at risk of potentially ruinous personal liability for minor accidental mistakes is highly unfair. It will also discourage quality arbitrators from accepting referrals in California.	Please see response to comment of Ms. Diaz, above.
Sharon Lybeck Hartmann (Office of the Independent Administrator)	General Waiver	Waiver – Commentator request guidance concerning whether standards may be waived; particularly Standard 10(d)	Staff do not believe that the issue of waiver should be addressed in the standards; we believe this is a matter for determination by the Legislature and the courts.
Luella Nelson (individually)	General Waiver	Because the provisions are ethical standards rather than procedural requirements, it is unclear whether they may be waived. Minimally, the standards should address which provisions are waivable and in what circumstances.	Please see response to comment of Ms. Hartmann, above. In addition, staff do not believe that the disclosure obligations referenced by the commentator are "procedural" requirements.
Norman Brand	General Coverage/Title of Standards	The standards are not ethics standards, but grounds for vacatur.	Staff is not recommending modification of the title or general scope of the standards. Code of Civil Procedure section 1281.85 refers to the disclosure requirements and other matters the Council is required to address as "ethical standards." The definition of "ethics" in the dictionary includes "the rules or standards governing the conduct of a person or the members of a profession" (American Heritage Dictionary of the English Language, 4th Edition, page 611). The standards are consistent with this definition.
M. Scott Donahey (Tomlinson, Zisko, Morosoli & Maser)	General Coverage/Title of Standards	The standards do not impose ethical obligations upon the neutral that if violated could lead to removal and/or exposure to liability, but rather create grounds for vacature for inadvertent and unintended violation.	Please see response to comment of Mr. Brand, above.
Ruth V. Glick (California Dispute Resolution Council)	General Coverage/Title of Standards	Standards should be retiled: "Ethical Rules for Neutral Arbitrators …" because Ethical Standards communicates something aspirational rather than mandatory rules with substantial consequences.	Please see response to comment of Mr. Brand, above. Code of Civil Procedure section 1281.85 refers to the requirements the Council is required to adopt as "ethical standards."

Commentator	Section	Summary of Comment	Staff Response
Luella Nelson (individually)	General Coverage/Title of Standards	Unintended consequences may result from the effort to put all the provisions relating to arbitration into a single body of rules. The Standards should only impose obligations that are truly ethical in nature. A separate Arbitrator's Handbook or other document summarizing arbitrators' procedural obligations under the CCP and other provisions would be desirable.	The standards do not attempt to incorporate all statutory requirements relating to arbitration. Code of Civil Procedure section 1281.85 specifically requires that the standards adopted by the council address disclosure and disqualification. In order to make it easier for arbitrators to find and understand all of their disclosure and disqualification obligations, the standards restate arbitrator disclosure and disqualification obligations that are established by statute. Please see response to comment of Mr. Brand, above. Staff anticipate preparing an educational pamphlet discussing the arbitrator's disclosure obligations under the standards.
Francis O. Spalding	General Coverage/Title of Standards	The standards should not be called "Ethical Standards" because they generally constitute mandatory rules of conduct rather than a system of moral principles. At the very least, the document ought to separate its provisions for mandatory, objectively enforceable conduct from its "ethical" provisions.	Please see response to comment of Mr. Brand, above.
Hon. Robert T. Altman	7 Suspension of Standards	The rules were written and reviewed in haste. I suggest that the Council start anew and that it try to assess what is practical and workable.	While staff supports the concept of continuing to review and improve the standards and of a comprehensive review by the Legislature of the entire area of arbitrator disclosure/disqualification/vacatur, staff does not believe it is appropriate or permissible for the council to suspend operation of the standards pending such review. Code of Civil Procedure section 1281.85 requires that, beginning July 1, 2002, neutral arbitrators comply with the ethics standards for arbitrators adopted by the Judicial Council and that the council adopt these standards effective July 1, 2002. Suspending operation of the standards would potentially place both arbitrators and the council in the position of violating statutory requirements.
Norman Brand	General Suspension of Standards	The standards have fundamental flaws that will have serious - albeit unintended consequences. The Judicial Council should suspend the operation of these standards -in particular Standards 7 & 10 --and undertake a far more measured examination of the problems they purport to solve.	Please see response to comment of Hon. Altman, above. Staff is recommending that standard 10(d) be deleted.
M. Scott Donahey (Tomlinson, Zisko, Morosoli & Maser)	General Suspension of Standards	The standards should be suspended and the perceived problems confronted directly.	Please see response to comment of Hon. Altman, above.

Commentator	Section	Summary of Comment	Staff Response
Var Fox (Judicate West)	General Suspension of Standards	Judicate West would support a further review and implementation of reasonable disclosure requirements, and suggests the proposed standards be held in abeyance, so that a true and independent review can be conducted not only by the legislature, but with significant input by the industry and the practicing Bar.	Please see response to comment of Hon. Altman, above.
Deborah Rothman	General Suspension of Standards	Suspend operation of standards and take a more measured examination of the problems they were created to solve.	Please see response to comment of Hon. Altman, above.
Kenneth C. Bryant (State Bar ADR Committee)	General Ongoing Review	Urges the Council to embark on an ongoing program of review, perhaps with the assistance of an advisory panel.	Staff agree that new issues are likely to arise as experience with the standards develops or as new statutes affecting arbitration are adopted. Staff is therefore recommending that additional comment be sought on the standards in one year and that a task force which includes representatives of the broad range of persons and entities interested in arbitrator ethics issues be formed at that time to assist in reviewing the standards and the comments.
Frances L. Diaz	General Ongoing Review	Mr. Frances L. Diaz suggests reopening public hearings to more fully/carefully explore hear concerns from plaintiff's bar as opposed to allowing comments of arbitration providers to determine how the standards should be written.	Please see response to comment of Mr. Bryant, above.
Ruth V. Glick (California Dispute Resolution Council)	General Ongoing Review	CDRC recommends that the Council reopen a comment period January 1, 2003, with a deadline several months thereafter and establish a procedure for receiving ongoing input about practice problems and have a continuing process to deal with the need for possible revision of the Standards.	Please see response to comment of Mr. Bryant, above.
Sharon Lybeck Hartmann (Office of the Independent Administrator)	General Ongoing Review	Further public comment should be requested for when enough time has passed in which to make statistically significant comment on how the standards operate in practice. Would like to comment again in summer 2003 or beginning of 2004	Please see response to comment of Mr. Bryant, above.
James R. Madison	General Ongoing Review	Provide for ongoing review of the standards	Please see response to comment of Mr. Bryant, above.
Michael Roster (Golden West Financial Corp.) (4-3-02)	General Ongoing Review	Someone should prepare and circulate a range of sample disclosures, and there should be a mechanism to modify the underlying statutes and standards to address the problems that inevitably will arise from actual practice.	Please see response to comment of Mr. Bryant, above. Staff anticipate preparing an educational pamphlet discussing the arbitrator's disclosure obligations under the standards.
Francis O. Spalding	General Ongoing Review	It is unwise to adopt the Standards without having in place some clear process, and responsibility, for amendment.	Please see response to comment of Mr. Bryant, above.
Kenneth C.	General	The few additional comments received should not be interpreted	Staff recognizes that there is significant concern

Commentator	Section	Summary of Comment	Staff Response
Bryant (State Bar ADR Committee)	Other	as meaning the standards are fine as they are. Concerns of CDRC and COPRAC include that the standards are dense and overwhelming, and that imprecise language creates confusion in implementation. The State Bar ADR Committee endorses COPRAC's recommendation that the Council renew its efforts to simplify the language of the standards to make them "user friendly"	regarding the density and complexity of the standards.. We have reviewed all of the standards and are proposing a number of changes aimed at reducing the complexity and improving the clarity of the standards.
Robert S. Clemente (NYSE)	General Other	NYSE continues to believe that the Standards cannot be applied to SRO arbitrations such as those administered by the NYSE, and has elaborated on those concerns in documents filed in Case No. C 02-3486 in the United States District Court for the Northern District of California. We would be happy to meet with you to discuss any concerns you may have regarding our current rules at any time.	Staff believe that the council does not have the authority to exempt arbitrators who are required by statute to comply with the standards. Code of Civil Procedure section 1281.85 provides that: Beginning July 1, 2002, a person serving as a neutral arbitrator pursuant to an arbitration agreement shall comply with the ethics standards for arbitrators adopted by the Judicial Council pursuant to this section. Thus if the person is serving as a neutral arbitrator in an arbitration that is being conducted pursuant to and arbitration agreement, the statute requires that arbitrator to comply with these standards. SRO arbitrators appear to fall within the scope of this statutory requirement, and thus staff believe that any exemption would need to be established by the Legislature. Staff have met with representatives of the NYSE, NASD and other security industry arbitration organizations, considered their comments, and tried to address those comments to the extent staff believe is possible within the authority delegated to the council by the Legislature.
Linda D. Fienberg (NASD Dispute Resolution)	General Other	NASD continues to have serious concerns abut several key elements of the Standards, which were articulated in the original comments it filed with the Council on February 25, 2002 NASD renews its offer to meet with the Judicial Council to discuss the differences between the Standards and NASD's arbitration disclosure requirements.	See response to comment of Mr. Clemente, above.
Jose Octavio Guillen (Riverside Superior Court)	General Other	For non-lawyer arbitrators (such as neutral evaluators, special masters, mediators, settlement officers, etc) it may be prudent to spell out what their KSA's/qualifications should be (or if specified in other sections of the CCP, reference these). Also consider requiring some type of notice to the public and litigants when agreeing to a non-lawyer arbitrator, so they have	The council's mandate under SB 475 was only to establish ethics standards for contractual arbitrators; it did not include establishing qualification standards for arbitrators.

Commentator	Section	Summary of Comment	Staff Response
		an informed basis for making such an agreement and some idea of the qualifications.	
Sharon Lybeck Hartmann (Office of the Independent Administrator)	General Other	Implementation date – if Council adopts standards on 12/12/02 and makes the effective 1/1/03, concerned that there will be inadequate time to inform panel and implement requirements	While staff understands this concern, we also believe that it is important that changes which clarify the standards or reduce burdens associated with the standards go into effect as quickly as possible. In addition, we believe that it is important to make any necessary modifications to standard 7(b)(12) before this provision goes into effect on January 1, 2003.
Gail Hillebrand (Consumers Union) **(4-04-02)**	General Other	Fundamental drawbacks for consumers in mandatory, predispute arbitration make it particularly important that there be strong ethical obligations on arbitrators. Ethics standards are even more necessary for private arbitrators than for judges or judicially selected arbitrators, because the judicial system has inherent safeguards which are missing from arbitration. The Standards should be adopted without change or delay.	Staff agree that the nature of consumer arbitrations pursuant to certain predispute agreements warrants different disclosure and other arbitrator conduct in consumer cases. Based on the above premise, currently both standard 7(b)(12) and standard 10(d) establish differential obligations for arbitrators where the arbitration is taking place under a contract of adhesion. In light of commentator's concerns, staff is recommending that differential obligations established by 7(b)(12) remain in the standards, but be amended to make them easier to understand and is recommending that the provisions in standard 10(d) that relate only to consumer arbitrations be deleted.
Robert A. Holtzman **(4/2/02)**	General Standard Development Process	Mr. Holtzman's comments, as a member of the "Blue Ribbon Panel of Experts on Arbitrator Ethics" were submitted on April 2, 2002. Due to current time constraints, Mr. Holtzman addressed only the matters which he considered to be of extreme concern. Neither the public nor the Blue Ribbon Panel had adequate time to consider the significant substantive changes contemplated by this project, or the language by which the changes are articulated.	Staff hope that commentators' concerns about the limited time to review the draft standards were addressed by the four-month, post-adoption comment period. Similarly, we hope that panel members are also more satisfied with the time that they have had to review the standards adopted by the council and the comments received during this post-adoption circulation.
Michael Roster (Golden West Financial Corp.) (4-3-02)	General Standard Development Process	The Blue Ribbon Panel has had insufficient time to review the final proposal and Council report and file individual written comments.	Please see response to comment of Mr. Holtzman, above.
Francis O. Spalding	General Standard Development Process	Inadequate time for staff to prepare standards and for public to comment .	Please see response to comment of Mr. Holtzman, above.
Francis O. Spalding	General Standard Development Process	In correspondence (addressed to Ms. Kiegler and Ms. Price) apparently submitted September 5: Mr. Spalding indicates that he was disinclined to comment	Please see response to comment of Mr. Holtzman, above. Staff has attempted to address commentators' concerns

Commentator	Section	Summary of Comment	Staff Response
		because "the Judicial Council appears to have paid no significant attention whatsoever to the voluminous comments that some … rushed to submit before the February 2002 deadline." Mr. Spalding also asserts that the Council did not "trouble to respond to even the most prevalent of those comments by offering some defense of its position." Mr. Spalding also criticizes the "utter silence of the Judicial Council with respect to the work of the so-called Blue Ribbon Panel of experts on arbitration."	through changes made to the proposed standards before they were adopted April 2002 and in recommended amendments being proposed to the council now. These changes are described in the April and December 2002 reports to the Council. Staff's specific responses to individual comments can be found in the comment charts attached to these reports. These reports also described the role played by the Blue Ribbon panel. The letter sent to all commentators acknowledging their comments stated that the council report and comment charts could be found on the council's website shortly after the council meeting.
Francis O. Spalding	General Standard Development Process	Propriety of legislative delegation to Judicial Council; separation of powers issues; questionable whether judgments based on laws adopted in this fashion would be entitled to full faith and credit; legislative mandate does not direct attention to provider disclosures.	Staff believe that the legislative delegation of authority to the council was proper, and that the council's action in adopting the standards was proper and would be upheld.
Francis O. Spalding	General Standard Development Process	Other process concerns: Staff presumably drafted behind closed doors; Blue Ribbon Panel was reportedly pledged to secrecy; no public record of committee work, including which panel members supported what views; unclear whether staff was obliged to follow Panel recommendations; composition of Panel included Legislative and Executive branch staff.	As was stated in the April 2000 and current reports to the council concerning these standards, staff consulted extensively with the Panel of Experts in developing the standards. While the panel meetings were not public, staff did not request and are not aware of any pledge to secrecy. As was indicated in the news release announcing formation of the panel and in the April 2002 report to the council, the Panel of Experts was appointed by the Chief Justice not to make recommendations to the Judicial Council, but to provide staff with input on drafts of the standards. Staff gave considerable weight to the Panel's input.
Hon. Eric E. Younger (ADR Services)	General Standard Development Process	The Judicial Council seems not to listen to people with day-to-day experience as arbitrators.	Staff has sought out, considered, and tried to address the comments and suggestions of arbitrators, including members of the Blue Ribbon Panel, other professionals who were consulted individually, and public commentators. We have presented these comments and staff's recommended responses to these comments in the April 2002 and December 2002 reports to the council.
Kathryn Page Camp (National Futures Association)	General Commentator Background	National Futures Association is a federally-authorized self-regulatory organization (SRO) for the futures industry, required to provide fair and equitable dispute resolution procedures for claims between customers and National Futures Association Members All National Futures Association customer arbitration	No response required.

Commentator	Section	Summary of Comment	Staff Response
		proceedings are governed by the Federal Arbitration Act, and National Futures Association could avoid the application of the Ethics Standards altogether simply by moving these cases out of California.	
Frances L. Diaz	General Commentator Background	Mr. Frances L. Diaz is an attorney who has faced many arbitrations, mediations and mandatory settlement conferences and has acted on many occasions as an arbitrator/mediator/facilitator. During an arbitration, Mr. Frances L. Diaz found his opposing counsel engaging in what appeared to be an inappropriate ex parte conversation with the arbitrator. He demanded that the arbitrator disclose how many times he had acted in any matter with the opposing attorneys, and was told by JAMS that arbitrators were not required to make such disclosures. Mr. Frances L. Diaz subsequently demanded that the arbitrator recuse himself, which the arbitrator apparently only did after awarding $111,000 attorneys fees to the opposing party.	No response required. Staff note, however, that disclosure of the facts which Mr. Diaz complains were not disclosed in her prior case is now required under the standards.
Ruth V. Glick (California Dispute Resolution Council)	General Commentator Background	Over the last eight years, CDRC developed and refined dispute resolution principles and standards of practice that demand fairness and impartiality in all aspects of a proceeding including full disclosure of any conflicts by the neutral.	No response required.
Sharon Lybeck Hartmann (Office of the Independent Administrator)	General Commentator Background	Ms. Hartman comments on the standards as Independent Administrator of the Kaiser Permanente mandatory arbitration system for disputes with its six million California members. The Office of the Independent Administrator receives about a thousand demands for arbitration each year. Kaiser is always the respondent and a number of arbitrators have more than one Kaiser case open at once.	No response required.
Lewis L. Maltby (National Workrights Institute)	General Commentator Background	The National Workrights Institute is a not-for-profit organization that advocates for greater protection of human rights in the workplace. Institute staff have been intimately involved in arbitration issues for years, working to ensure that arbitration is voluntary and fair.	No response required.
Keith Maurer (National Arbitration Forum)	General Commentator Background	NAF provides referrals and administrative services to neutrals who provide arbitrator and mediator services nationally.	No response required.
Luella Nelson (individually)	General Commentator Background	Ms. Nelson has been a full-time dispute resolution neutral since 1986, and has served as a leader in a number of professional dispute resolution and organizations. She submitted separate sets of comments individually and on behalf of the Bar Association of San Francisco's Labor and Employment Law	No response required.

Commentator	Section	Summary of Comment	Staff Response
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Luella Nelson (obo San Francisco Bar Labor & Employment Section)	General Commentator Background	The Bar Association of San Francisco's Labor and Employment Law Section is made up of practitioners who represent employees, employers and labor unions as well as neutrals who conduct arbitrations both in the collective bargaining context and otherwise.	No response required.
State Bar Committee on Professional Responsibility and Conduct	General Commentator Background	COPRAC believes its experience in drafting and conflicts rules for lawyers gives us some perspective on striking an appropriate balance between rules requiring full disclosure and the burden and unintended consequences that overly broad rules can have. COPRAC is also well aware of how difficult it is to craft rules such as the Standards	No response required.
State Bar Committee on Professional Responsibility and Conduct	1	The State Bar Committee fully supports the general purpose, and believes the importance of public confidence in the integrity and fairness of the process can not be underestimated.	No response required.
Robert A. Holtzman (4/2/02)	2a	On their face, the Standards do not apply to party-appointed non-neutral arbitrators, but it is not clear whether they require disclosures and disqualification of such an arbitrator who has elected or has been required by the arbitral panel or administrative tribunal to serve as if neutral. Mr. Holtzman recommends adding language to the effect that a party-appointed arbitrator who elects to serve or is required to serve as if neutral is not subject to these Standards.	Based upon this comment and others received at presentations, staff is recommending that unilaterally-appointed arbitrators be deleted from the definition of neutral arbitrators.
Ruth V. Glick (California Dispute Resolution Council)	2c	Definition of "conclusion of the arbitration" should include "when the case settles before the arbitration award is made."	Staff is recommending that 2(c) be amended to add situations in which the arbitration ends because of settlement or dismissal to circumstances that constitute the "conclusion of the arbitration."
Sharon Lybeck Hartmann (Office of the Independent Administrator)	2c	Definition of "conclusion of the arbitration" should be broadened to address methods such as settlement, withdrawal and dismissal	Please see response to comment of Ms. Gilck, above.
Gail Hillebrand (Consumers Union)	2d	The definition of "consumer arbitration" is not as broad as Consumer Union would like to see because it reaches only those arbitrations held pursuant to mandatory arbitration clauses, thus excluding arbitrations between home buyers and realtors	Staff believe the current definition of "consumer arbitration" is appropriate. The term "consumer arbitration" is used in the standards to identify arbitrations in which, because they are the result of a contract of adhesion in which the consumer party only had the power either to accept the arbitration provision or forego the contract, there are heightened concerns

Commentator	Section	Summary of Comment	Staff Response
			about access to information, control over the process and fairness that warrant additional duties for the arbitrator.
John Kagel **(10-14-02)**	2d	A vetoed bill sought to define "consumer arbitration" as used in AB 2574, 2656 and 2915. The Council should not guess what the Legislature meant by consumer arbitration and should refrain from dealing with them until the Legislature and Governor agree what is being referred to.	Staff is not recommending adoption of the definition of "consumer arbitration" in AB 3029, which was vetoed by the Governor.
James R. Madison	2d	Standard 2(d) should be revised so it will be clear at the outset whether or not a matter is a consumer arbitration. It may not be possible to determine applicability under the current definition until there have been evidentiary hearings and possibly factual determinations by the arbitrator.	Staff agrees with comments that the definition of "consumer arbitration" should be as clear as possible so that arbitrators can recognize these arbitrations in advance and fulfill their related duties. However, staff does not believe that any of the language suggested by commentators improves on the current definition in the standards in this regard. Staff note that current standard 7(b)(12)(H) [standard 8(a)(2) in the proposed revision of the standards] attempts to address some of the concern about situations where the arbitrator does not know it is a consumer arbitration by providing that an arbitrator is not required to make the disclosures required in the case of "consumer arbitration" if he or she reasonably believes that the arbitration is not a consumer arbitration based on reasonable reliance on a consumer party's representation that the arbitration is not a consumer arbitration.
Francis O. Spalding **(Feb. 2002)**	2d	Mr. Spalding's February 2002 comment on the definition of consumer arbitration, as the proposal was initially circulated for comment expresses concern that this definition would apply to a broad range of disputes, including customer disputes in the securities industry and many construction disputes, although there are significant differences in the context of such consumer disputes.	The definition of "consumer arbitration" was amended after these comment were submitted and staff believe that the current definition is the appropriate breadth.
State Bar Committee on Professional Responsibility and Conduct	2d3	The definition of "consumer contracts" does not incorporate any established legal standards but instead refers to situations where a consumer was "required to accept" an arbitration provision. COPRAC thinks this is vague and will lead to litigation, and recommends adopting established legal doctrines.	The Supreme Court has stated that the term "contract of adhesion" "signifies a standardized contract, which, imposed and drafted by the party of superior bargaining strength, relegates to the subscribing party only the opportunity to adhere to the contract or reject it." (Armendariz v. Foundation Health Psychcare Services, Inc. (2000) 24 Cal.4th 83, 113). Staff believe that the standard's definition of "consumer arbitration" incorporates the elements of a contract of adhesion identified in this case – a contract drafted and imposed by the party of superior bargaining strength which the weaker party can only accept or reject – but uses less

Commentator	Section	Summary of Comment	Staff Response
			complex language. Staff believes that replacing the standard's language with the language from this case would not make this definition clearer.
Micki Callahan (Department of Industrial Relations, State Mediation and Conciliation Service)	2g	Definition of provider organization should be amended to exempt "governmental agencies that provide lists of arbitrators upon request and do not otherwise coordinate, administer, or conduct arbitrations."	Staff is recommending that this definition be amended to apply only to nongovernmental entities.
Sharon Lybeck Hartmann (Office of the Independent Administrator)	2g	Consider whether the definition of "private arbitration company" in pending legislation (eg AB 3029) could be used in the standards for consistency	Given that AB 3029 was not enacted, staff does not believe there is any imperative that this definition be incorporated into the standards. However, we note that the definition excluded government entities.
State Bar Committee on Professional Responsibility and Conduct	2k & l	COPRAC discerns no statutory or other basis for the distinction between lawyer "in the arbitration" and a lawyer "for a party" and suggests that the standards could be made more simple and easier to understand if this distinction were eliminated. COPRAC also does not understand why a special definition of "a lawyer in the arbitration" is necessary for lawyers who "personally advised or *in any way* represented" a public agency "concerning the factual or legal issues in the arbitration" and believes this further "muddies the water."	Although staff agree that having two definitions of attorney who are representing parties in the arbitration increases the complexity of the standards, staff is not recommending a single definition for such attorneys. Code of Civil Procedure section 1281.9 defines "lawyer for a party" to include "any lawyer or law firm currently associated in the practice of law with the lawyer hired to represent a party." Because Code of Civil Procedure section 1281.85 prohibits the council from limiting any statutory disclosure obligations, where "lawyer for a party" is used in the statute, the council does not have the authority to eliminate arbitrators' obligation to make disclosures concerning lawyers or law firms associated with a lawyer representing a party. However, the council is not required to use the expansive "lawyer for a party" term in other disclosure requirements in the standards. Because of concerns about the practical burden it would place on arbitrators to try to make disclosures about associates of a lawyer representing a party in all circumstances, "lawyer for a party" was generally not used except where the term already appears in statute. Instead, we have used the more narrow term "lawyer in the arbitration." While staff is not recommending eliminating "lawyer in the arbitration," we are recommending that the definitions of both "lawyer in the arbitration" and "lawyer for a party" be amended to use similar language and

Commentator	Section	Summary of Comment	Staff Response
			that the standard's definition of "lawyer for a party" more closely track the statutory language. We are also recommending eliminating the "special definition" to which COPRAC refers; incorporating it as a separate disclosure obligation in 7(d)(7).
Robert A. Holtzman (4/2/02)	2k & l	Under the definition of "lawyer for a party" and Standard 7, the prospective arbitrator would have to make a reasonable effort to identify and investigate potential relationships of himself and others with potentially thousands of attorneys, anywhere in the world, none of whom have anything to do with the arbitration at hand. If the effort is inadequate the validity of the resulting award may be at risk. A prospective arbitrator will have no way of knowing what other interests a party or a party's representative may have, or what attorneys may represent that party or its representative with respect to those interests.	Code of Civil Procedure section 1281.9 defines "lawyer for a party" to include "any lawyer or law firm currently associated in the practice of law with the lawyer hired to represent a party." Because Code of Civil Procedure section 1281.85 prohibits the council from limiting any statutory disclosure obligations, where "lawyer for a party" is used in the statute, the council does not have the authority to eliminate arbitrators' obligation to make disclosures concerning lawyers or law firms associated with a lawyer representing a party. However, staff is recommending the adoption of a new standard 9(c) to clarify an arbitrator's duty of inquiry regarding associates of a lawyer in the arbitration. In addition, staff recommends that Mr. Holtzman's concerns about the breadth of the statutory term "lawyer for a party" be transmitted to the Legislature.
Luella Nelson (individually)	2k & l	Clarify the definitions of "lawyer for a party", "lawyer hired to represent a party", "lawyer in the arbitration", "lawyer who is associated in the private practice of law with a lawyer in the arbitration" and make usages more consistent, or explain the distinctions.	Please see response to the comments of the State Bar Committee on Professional Responsibility and Competence and of Mr. Holtzman, above. Staff is also recommending that a definition of "private practice of law" be added to the standards as suggested by this commentator.
Sharon Lybeck Hartmann (Office of the Independent Administrator)	2l	Consider slight difference between definition of "lawyer for a party" in standards and AB 3029, and determine whether the same definition could be used for consistency	Given that AB 3029 was not enacted, staff does not believe there is any imperative that differences in these definitions be addressed.
Kenneth E. Owen	2l	Standard 2l omits "or law firm" from the definition in 1281.9(c) The standard is unclear as to the meaning of "currently" associated, and the data base that would be required to determine and make the required disclosures is not available. The standards should be rewritten to make clear that the only disclosure required is prior arbitrations involving lawyers whose names appear on the arbitration demand and response and their law firms, and that there is no requirement to disclose any arbitrations involving other lawyers in those firms or their prior	Please see response to the comments of the State Bar Committee on Professional Responsibility and Competence and of Mr. Holtzman, above.

Commentator	Section	Summary of Comment	Staff Response
		associated firms or lawyers. Otherwise, the burden of identifying lawyers associated in the practice of law with a lawyer for a party should be placed on the parties counsel, and the arbitrator only required to respond to names on such lists.	
Francis O. Spalding	2l	An arbitrator has no way of knowing what lawyers represent a party; or what lawyers are currently associated in practice of law with a lawyer representing a party	Please see response to the comments of the State Bar Committee on Professional Responsibility and Competence and of Mr. Holtzman, above.
Ruth V. Glick (California Dispute Resolution Council)	2n	Clarify whether "members of the arbitrator's extended family" includes stepchildren who do not reside in the arbitrator's household. Arbitrator may have a closer relationship with stepchildren than with other relatives identified in Family Code 297	Stepchildren are not explicitly included in the definition of "extended family," but arbitrators overarching duty is to disclose any matter that could cause a person aware of the facts to entertain a doubt that the arbitrator would be able to be impartial.
State Bar Committee on Professional Responsibility and Conduct	2q	The limited definition of significant personal relationship as including "a close personal friendship" is unclear, and would require that an arbitrator disclose a seemingly causal personal connection with a party or lawyer for a party (which includes affiliated lawyers) or taking the chance that the relationship might subsequently be deemed significant, leading to the overturning of an award for failure to disclose.	The term "significant personal relationship" is taken directly from Code of Civil Procedure section 1281.9 and is not defined in that statute. Arbitrators will, therefore, have to exercise some judgment about what is a "significant" relationship.
Gail Hillebrand (Consumers Union) **(4-04-02)**	3a2	Applicability of the standards to arbitrations in which one of the parties is a consumer residing in California is important because a provider might otherwise eliminate application of the Standards to its arbitrators simply by changing the provider's own rules of procedure to select the Federal Arbitration Act as the governing law for consumer arbitrations involving interstate commerce administered by that provider.	The subdivision referred to by Ms. Hillebrand, (a)(3), was deleted from the standards on the recommendation of the council's Rules and Projects Committee and therefore does not appear in the standards adopted by the council in April 2002.
Robert A. Holtzman **(4/2/02)**	3a	Subdivision 3(a)(1) is a legitimate exercise of California's power. Subdivisions (a)(2) and (a)(3) extend jurisdiction to matters where California is only tangentially involved, and may encompass arbitrations under the Federal Arbitration Act in which cases it would be preempted. Mr. Holtzman infers that subdivisions (2) and (3) should be deleted.	See response to Ms. Hillebrand's comments, above. Staff believe that it is appropriate that these standards apply to arbitrators who are conducting arbitration hearings in California, as provided in (a)(2).
Micki Callahan (Department of Industrial Relations, State Mediation and Conciliation Service)	3b2	Arbitrations between governmental agencies should be exempt from disclosure.	Staff believes that the standards cannot exempt arbitrators who are required by statute to comply with the standards. Code of Civil Procedure section 1281.85 provides that: Beginning July 1, 2002, a person serving as a neutral arbitrator pursuant to an arbitration agreement shall comply with the ethics standards for arbitrators adopted by the Judicial Council pursuant to this section.

Commentator	Section	Summary of Comment	Staff Response
			Thus if the person is serving as a neutral arbitrator in an arbitration that is being conducted pursuant to and arbitration agreement, the statute requires that arbitrator to comply with these standards. The arbitrations that are currently identified in 3(b) as exempt from the standards are only those that it was concluded are not covered by the statutory requirement for compliance with the standards
Franklin Geerdes Geerdes & Geerdes	3b2	The Standards should provide an exemption or well-run and well-established organizations, or alternatively a delayed effective date as to arbitral organizations that are subject to Federal Commissions. NASD Dispute Resolution is a well- established institution that has well-served the small investor and the industry .Its administration is fair and its "disclosure" procedures are sophisticated. The Standards will result in many California investor claimants, and respondents, having their cases delayed indefinitely or may have to seek the agreement of NASD and the opposing party(s) to go to the burden of moving the arbitrations to another state.	See response to comment of Ms. Callahan, above.
Ruth V. Glick (California Dispute Resolution Council)	3b2	Arbitrators who volunteer their time for courts in judge pro tem positions or as pro bono arbitrators or mediators in court-connected programs should be excluded.	See response to comment of Ms. Callahan, above. However, staff is recommending that standard 7 be amended to eliminate the requirement that arbitrators disclose prior pro bono service as a dispute resolution neutral other than an arbitrator.
Luella Nelson (individually)	3b2	Add new 3b2I excluding “An arbitration conducted where the parties have voluntarily agreed, after a dispute has arisen, to submit that dispute to arbitration.”	See response to comment of Ms. Callahan, above.
Micki Callahan (Department of Industrial Relations, State Mediation and Conciliation Service)	3b2H	Arbitrations involving internal disputes of labor organizations should be exempt from the standards.	See response to comment of Ms. Callahan, above.
Frances L. Diaz	3b2H	Revise to clarify that standards in fact apply to private mandatory employment agreements	Staff believe that the standards do not contain any language suggesting that such arbitrations are exempted.
Kathryn Page Camp (National	5	Fully support	No response required.

Commentator	Section	Summary of Comment	Staff Response
Futures Association)			
Gail Hillebrand (Consumers Union) **(4-04-02)**	5	Standard 5, on the general duty to act in a manner that upholds the integrity and fairness of the arbitration process is another important element of the standards.	No response required.
Kathryn Page Camp (National Futures Association)	6	Fully support	No response required.
Kenneth E. Owen	6	The matters addressed in Standards 7 (b) (14) (B) and (C) and 7 (c) should be bases for refusing to serve, rather than disclosure requirements.	The matters in 7(b)(14) are disclosures currently required by statute. Making them grounds for declining appointment would substantially increase restrictions on arbitrators. Staff does not believe such a change is warranted. When a draft of the standards was circulated for comment last winter, the items in 7(c) were included in standard 6 as matters requiring an arbitrator to decline appointment. Commentators at that time suggested that it was preferable for these matters to be disclosed and for parties to decide whether warrant disqualification.
Var Fox (Judicate West)	7 General Overall Different Approach/ Review of Disclosure Obligations Needed	Judicate West would support a further review and implementation of reasonable disclosure requirements, and suggests the proposed standards be held in abeyance, so that a true and independent review can be conducted not only by the legislature, but with significant input by the industry and the practicing Bar.	Staff agree that an overall review by the Legislature of the entire disclosure scheme embodied in both statute and these standards would be beneficial and recommends transmitting this comment to the Legislature. However, staff does not believe it would be consistent with the council's statutory mandate or arbitrator's statutory obligations to suspend operation of the disclosure requirements in these standards pending that review.
Ruth V. Glick (California Dispute Resolution Council)	7 General Overall Different Approach/ Review of Disclosure Obligations Needed	There should be a criterion of materiality [concerning disclosure], which could then be used by court when faced with a challenge to vacate for non-compliance with the standards. Disclosures could be limited to those which enable parties to make knowledgeable appointments of arbitrators and arbitration providers, which could affect or influence the outcome of a case, or which would give the arbitrator a direct or indirect financial or personal interest in the outcome	Staff believes that these alternate approaches to the issue of arbitrator disclosure would be appropriate options for the Legislature to explore as part of an overall review of the entire disclosure scheme embodied in both statute and these standards and recommends transmitting this comment to the Legislature.
Don Sherwyn	7 General Too	The disclosure requirements in Standard 7, while requesting information that is relevant, are so complicated and extensive as to pose a definite risk to the neutral of inadvertent non-	Staff are recommending many changes to standard 7 to make it less complicated and easier to understand, including:

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	Complicated	disclosure or incomplete disclosure, and consequently pose a risk to the efficiency and cost-effectiveness of arbitration. Mr. Sherwyn hopes this can be addressed by a simplification of Standard 7.	• Breaking the current standard 7 into three separate standards: one focusing on disclosures required in all arbitrations (standard 7), one focusing on the additional disclosures required in consumer arbitrations administered by a provider organization (standard 8), and one focusing on arbitrators duty to inform themselves about matters that must be disclosed (standard 9). The shorter standards should be easier to read and understand. In addition, gathering together all of the provisions concerning arbitrators' duty of inquiry should make that obligation clearer; • Moving former subsection 7d, which contains provisions generally applicable to all of the disclosure obligations set forth in former subsection 7b, up to the beginning of standard 7. Several comments we received suggested that readers missed these provisions when they were placed at the end of standard 7, creating some confusion about their application; • Replacing cross-references in 7(b)(4) and (e) [renumbered 7(d)(4) and (f) in the proposed revision] to Code of Civil Procedure section 1281.9 with the relevant statutory language, so that readers do not have to look up these separate provisions; • Adding "non-collective bargaining" before references to "cases" and "arbitrations," in subdivisions 7(b)(4), (5), (12)(A)(v) [renumbered 7(d)(4) and (5) and standard 8 in the proposed revision], as suggested by commentator Ms. Nelson, to make clear, as provided in Code of Civil Procedure 1281.9, that these cases and arbitrations do not need to be disclosed; • Modifying the provisions in 7(b)(4), (5) and (12) [renumbered 7(d)(4) and (5) and standard 8 in the proposed revision] that describe the information that must be disclosed about prior cases so that all three provisions use the same basic structure. Following a consistent structure should make these provisions easier to understand. Staff believes that these recommended changes will address Mr. Sherwyn's concerns at lease to some degree. However, part of the complexity of this standard stems from the fact that, in addition to

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			establishing new disclosure requirements, it incorporates the many existing statutory disclosure obligations. Staff continues to believe this incorporation is the best approach to helping arbitrators find and understand all of their disclosure obligations, but it also makes a certain amount of complexity in this standard irreducible.
Hon. Robert T. Altman	7 General Too Detailed/ Burdensome	The Standards are ambiguous, unnecessarily complex, and sometimes unintelligible. They do not reflect an understanding of how an arbitrator receives or what information is available when he or she attempts to comply with the Standards. The standards are a "mind field" and will result in flight of qualified arbitrators. Most of the new disclosure rules do not afford additional protection to litigants. The Council should start anew and assess what is practical and workable. Thinks the disclosure requirements are politically motivated; an attempt to make the disclosures so difficult that arbitrators will refuse to hear cases.	Please see response to comments of Mr. Sherwyn, above. The new disclosure requirements recommended by staff and adopted by the council are intended to promote the integrity and fairness of the arbitration process, not to make the arbitration process so burdensome that arbitrators will leave the practice. However, there are new burdens associated with these new obligations. In addition to changes to reduce the complexity and improve the clarity of standard 7, staff are also recommending changes to minimize, to the extent possible within the council's statutory authority, these burdens, including: • Narrowing the family members covered by 7(b)(2) [renumbered 7(d)(2)(A) in the proposed revision] to only those specified in the statute. The current standard uses "extended family" here in order to simplify the language, but this creates additional burdens for arbitrators; • Narrowing the disclosures concerning dispute resolution services other than arbitration that must be disclosed under 7(b)(5) [renumbered 7(d)(5) in the proposed revision] to cases in which the arbitrator received or expects to receive any compensation for these services; • Broadening 7(d)(1) [renumbered 9(b) in the proposed revision] to include other matters relating to an arbitrator's extended family to clarify that this "safe harbor" provision also covers extended family members knowledge of facts disputed in the arbitration; and • Adding new 9(c) to try to address concerns about the difficulty arbitrator's face in obtaining information about the associates of the lawyers who are representing the parties in the arbitration. Similar in concept to former 7(b)(1), this provision would

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			specify how arbitrators can fulfill their duty of inquiry about relationships with associates of the lawyers in the arbitration; However, as noted above, standard 7 incorporates the many existing statutory disclosure obligations of arbitrators. To the extent the standards are simply restating statutory disclosure obligations, the council does not have the authority to limit these statutory obligations. Staff recommends that this and all other comments that either specifically identify concerns about statutory obligations or that appear to reflect concerns about the entire scheme of disclosure (statutes plus standards) be transmitted to the Legislature for its consideration. Despite the changes recommended by staff, some arbitrators may nevertheless decide to stop conducting arbitrations in California, or to stop accepting certain types of cases. We do not believe that this is likely to appreciably impact the availability of high-quality arbitrators. If information subsequently indicates that this regulatory scheme has appreciably impacted the availability of arbitrators, the Legislature and council can take steps to address this impact.
Kathryn Page Camp (National Futures Association)	7 General Too Detailed/ Burdensome	NFA is concerned that some of the provisions of Standard 7(b) are too complex and place too high a burden on an arbitrator. NFA arbitrators are only paid an honorarium. NFA is concerned that the Ethics Standards could discourage qualified arbitrators from serving.	Please see response to comments of Mr. Sherwyn and Hon. Altman, above.
Gary Christopherson (Kroloff, Belcher, Smart, Perry & Christopher-son)	7 General Too Detailed/ Burdensome	The proposed disclosure rules would significantly and unnecessarily impose burdens on neutrals and those seeking their services and would likely reduce the availability of qualified neutrals. Mr. Christopherson urges the Judicial Council to reconsider these guidelines.	Pleas see response to comments of Mr. Sherwyn and Hon. Altman, above.
State Bar Committee on Professional Responsibility and Conduct	7 General Too Detailed/ Burdensome	The standards are very dense and somewhat overwhelming. COPRAC urges a top-to-bottom review of standards to see whether the substantive provisions can be expressed more simply. The extensive use of defined terms is a particular concern. COPRAC also urges consideration of whether the standards are so onerous that they may defeat arbitration's goal of more	Please see response to comments of Mr. Sherwyn and Hon. Altman, above. Staff have reviewed all of the standards and are recommending changes intended to make the standards as clear as possible. However, to the extent the standards are simply restating statutory disclosure obligations, we have chosen to use the statutory

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		streamlined dispute resolution than the courts can provide. Overly broad standards may discourage arbitrators and providers from operating in California, and the prospect of court challenges to awards based on claims of noncompliance with the Standards may defeat the finality and efficiency of arbitration. COPRAC believes the benefits served by Standard 7's disclosure requirements as currently drafted are outweighed by their potential burden. COPRAC questions whether the expansive scope of the specific requirements in Standard 7 are all necessary to avoid reasonable doubt concerning the arbitrator's neutrality.	language so as not to create ambiguity between the standards and the relevant statutes. This choice may contribute to the density of standard 7's language. As noted in response to Hon. Altman's comments, the new disclosure requirements recommended by staff and adopted by the council are intended to promote the integrity and fairness of the arbitration process. Both staff and the council weighed the associated burdens of these new requirements when recommending and adopting them. Staff believes that the benefits of these new requirements outweigh their associated burdens and would not have recommended their adoption had they concluded otherwise. Because this comment does not distinguish between new disclosure obligations created by the standards and the provisions in standard 7 that simply restate existing statutory disclosure obligations, It is not clear whether the basis of the commentator's concern is the standards, the underlying statutes relating to contractual arbitration, or some combination of these two. As noted above, to the extent the standards are simply restating statutory disclosure obligations, the council does not have the authority to limit these statutory obligations. Staff recommends that this and all other comments that either specifically identify concerns about statutory obligations or that appear to reflect concerns about the entire scheme of disclosure (statutes plus standards) be transmitted to the Legislature for its consideration.
Hon. Eric E. Younger (ADR Services)	7 General Too detailed/ burdensome	Escalating disclosure requirements will result in arbitrations being done by lower-quality people.	Please see response to comments of Mr. Sherwyn, Hon. Altman, and the State Bar Committee on Professional Responsibility and Competence, above.
Var Fox (Judicate West)	7 General Too Detailed/ Burdensome	A neutral must maintain the highest level of integrity and fairness for the Arbitration process to be successful. Although most neutrals will make sure their credibility is maintained, rules, laws or regulations will not change the thought process of those who are exceptions. The standards appear to micro-manage the entire process and if implemented to the letter, may make the process self-defeating.	Please see response to comments of Mr. Sherwyn, Hon. Altman, and the State Bar Committee on Professional Responsibility and Competence, above.
Robert A. Holtzman **(4/2/02)**	7 General Too Detailed/	Standard 7 is too long, borders on intelligibility, and implicates problems raised by the broad definition of "lawyer for a party. The statement in the first paragraph of 7(b) is adequate and	Please see response to comments of Mr. Sherwyn, Hon. Altman, and the State Bar Committee on Professional Responsibility and Competence, above. Staff is also

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	Burdensome	effective.	recommending that the definition of "lawyer for a party" be amended; see responses to comments of the State Bar Committee on Professional Responsibility and Conduct and others concerning the definitions in standards 2(k) and (l).
Louise A. LaMothe	7 General Too Detailed/ Burdensome	The apparent premises of "the more disclosure the better" is an overgeneralization that is certainly not the case.	As noted in response to Hon. Altman's comments, the new disclosure requirements recommended by staff and adopted by the council are intended to promote the integrity and fairness of the arbitration process.
Lewis L. Maltby (National Workrights Institute)	7 General Too Detailed/ Burdensome	The arbitrator may not know the existence of some persons concerning whom disclosures must be made (relatives of the arbitrator's spouse or domestic partner) or matters that must be disclosed (e.g. a party not named in any document previously advised a public agency party on an issue involved in the dispute). Standard 7 is extremely long and complex. Many of the disclosure rules are unnecessary. Although many provisions of Section 7 are mandated by the authorizing statute, to the extent the Judicial Council has gone beyond the legislative requirements, it has exacerbated the problem.	Please see response to comments of Mr. Sherwyn, Hon. Altman, and the State Bar Committee on Professional Responsibility and Competence, above. The specific requirements concerning the relatives of an arbitrator's spouse that are incorporated in standards 7(b)(1), (2), and (11) [renumbered 7(d)(1), (2) and (12) in the proposed revision] are all based on existing statutory disclosure obligations, they are not new obligations created by the standards. The new requirement added by the standards is that these obligations encompass an arbitrator's domestic partner. Staff recommends that this and all other comments that express concerns about statutory obligations be transmitted to the Legislature for its consideration. Staff are recommending that the portion of standard 7(b)(2)(A) which currently addresses relationships with lawyers who advised public agencies, be deleted and that a clearer provision requiring disclosure if the arbitrator him or herself advised a public agency on the issues involved in the arbitration be adopted as new 7(d)(7)(C).
Keith Maurer (National Arbitration Forum)	7 General Too Detailed/ Burdensome	The disclosure requirements place a disproportionate burden on the most competent arbitrators, who are selected frequently. Compliance is made more difficult because many of these arbitrators render services administered by more than one provider organization. Arbitrators report confusion about how the Standards comport with other rules governing arbitration. The standards should be consistent with other rules, such as the FAA rules related to bias.	Please see response to comments of Mr. Sherwyn, Hon. Altman, and the State Bar Committee on Professional Responsibility and Competence, above. Staff believes that the only disclosure requirement under which more frequently selected arbitrators would have greater burdens is the requirement to disclose information about prior arbitrations in standard 7(b)(4) [renumbered 7(d)(4) in the proposed revision]. This requirement is based upon an existing statutory obligation from Code of Civil Procedure section 1281.9; it is not a new obligation created by the standards. Staff

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			recommends that this and all other comments that express concerns about statutory obligations be transmitted to the Legislature for its consideration. The Federal Arbitration Act (FAA) does not contain any ethics standards for arbitrators so staff do not believe there is any potential conflict with the FAA concerning arbitrator bias.
Michael Roster (Golden West Financial Corp.) (4-3-02)	7 General Too Detailed/ Burdensome	It is reckless to adopt a set of disclosures when no one has even seen a sample of what the required disclosures will look like. There should be a careful review of several sample disclosures, and maybe even test-marketing those samples, to decide what really matters, versus what only confuses the end-user.	While we believe that the new disclosure obligations contained in the standards will provide information that assists parties in arbitration, staff agree that it would be beneficial to review the impact and effectiveness of the entire scheme of disclosures required under the statutes and these standards as a whole, with an eye on their usefulness to the parties. Staff recommends that this suggestion be transmitted to the Legislature.
Var Fox (Judicate West)	7 General Impact on Availability of Arbitrators/ Arbitration	If proposed standards of disclosure are implemented, this may cause many excellent neutrals to remove themselves from the process and the profession itself. This is very problematic, particularly in smaller cases. A failure to disclose a required disclosure item, even if non-intentional could conceivably result in a liability or malpractice situation. To the extent that arbitrators would now be required to check and recheck records, this may cause many neutrals to leave the profession. The vast majority of arbitrators in California are not full time neutrals and will not maintain the level of record keeping as an ADR provider might. Although highly respected, the standards will likely cause them to leave the system, eliminating the ability to move smaller cases through the ADR process.	Please see response to comments of Mr. Sherwyn, Hon. Altman, and the State Bar Committee on Professional Responsibility and Competence, above. As noted above, staff is recommending many changes to clarify the standards and to minimize burdens associated with the standards. Staff is also recommending adding a provision to standard 1 clarifying that the standards are not intended to affect any existing cause of action or create any new cause of action. Some arbitrators may nevertheless decide to stop conducting arbitrations in California, or to stop accepting certain types of cases. We do not believe that this is likely to appreciably impact the availability of high-quality arbitrators. If information subsequently indicates that this regulatory scheme has appreciably impacted the availability of arbitrators, the Legislature and council can take steps to address this impact.
Lewis L. Maltby (National Workrights Institute)	7 General Impact on Availability of Arbitrators/ Arbitration	The probable impact of the Standard will be to eliminate employment arbitration in California. As a result, consumers and employees will have nowhere to take their claim. While the majority of consumer/employee claims currently being arbitrated will simply disappear, the remaining disputes will burden the court system.	Please see response to comments of Mr. Fox, above. In light of commentators' concerns, staff is recommending that differential obligations for consumer arbitrations established by 7(b)(12) remain in the standards, but be amended to make them easier to understand and is recommending that the provisions in standard 10(d) that relate only to consumer arbitrations be deleted.
Keith Maurer (National	7 General	Since enactment of the Standards, some neutrals have refused appointment to cases subject to the Standards. The Forum	Please see response to comments of Mr. Fox and Mr. Maltby, above.

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Arbitration Forum)	Impact on Availability of Arbitrators/ Arbitration	expects the number of qualified arbitrators who withdraw from conducting arbitrations subject to the Standards will significantly increase. The standards will reduce consumers' access to arbitration, which is the best alternative access to justice for most Americans. The onerous disclosure requirements will reduce consumers' access to the most competent neutrals. The standards impose an unnecessary and additional expense on consumer claims, which is not associated with high-stake arbitrations where non-consumer parties are paying the costs.	
C. David Serena	7 Impact on timeliness	Disclosures create delay during selection process.	The standards have not altered the existing statutory timeframe within which arbitrators must make disclosures and parties must serve notices of disqualification. However, if there are additional disqualifications based upon new disclosures that must be made under these standards, the process of selecting an arbitrator may take longer. Staff believe that the council was aware of this risk when it adopted the new disclosure obligations. Staff believes that some of Mr. Serena's concerns about delay in the arbitrator selection process will be addressed by the deletion of standard 10(d).
Var Fox (Judicate West)	7 General Impact on Finality	Judicate West supports appropriate disclosure requirements for arbitrators, however the level of disclosure of the proposed standards raises concerns about diminishing returns and diminishing the entire ADR system by opening the door to attack a decision based on a failure to disclose "everything" although disclosure would not have changed the result.	Staff believe that the new disclosure obligations added by the standards will provide information that assists parties in arbitration. Although these standards do require the disclosure of additional matters, staff believe that the primary focus of Mr. Fox's concerns is the breadth of the new statutory ground for vacating an arbitration award based on an arbitrator's a failure to make a required disclosure. These comments raise important concerns about this new vacatur provision, however, the council has no authority to modify the statutory grounds for vacatur. That authority lies with the Legislature. We therefore believe that the Legislature is the correct audience for these concerns, and recommend that this comment be transmitted to the appropriate members of the Legislature.
Kenneth E. Owen	7 General Impact on Finality	Inevitable failure of complete disclosure will lead to uncertainty as to the finality of the award.	Please see response to comments of Mr. Fox, above.
Deborah	7	The Standards create the potential for abuse by a losing party	Please see response to comments of Mr. Fox, above.

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Rothman	General Impact on Finality	who will be able to utilize a de minimis failure to disclose to delay enforcement of the Award.	
Ruth V. Glick (California Dispute Resolution Council)	7 General Lawyers/ Parties should have corresponding duty to disclose	Attorneys should also be obligated to make disclosure. CDRC suggests standards make it clear that attorneys "should make a reasonable good faith effort to ascertain the existence of connections to the arbitrator of which he or she may [be] aware." If attorneys refuse, they should be precluded from challenging the award or suing the arbitrator on the basis of nondisclosure of information lawyers should have provided.	The council has no authority to establish obligations for parties or attorneys who are participating in an arbitration; Code of Civil Procedure section 1281.85 did not delegate to the council any authority concerning with regard to parties or attorneys in arbitrations. Staff recommends that the suggestion that parties and attorneys also have disclosure duties be transmitted to the Legislature. Although staff believes that the council does not have the authority to set standards for parties or attorneys, as suggested by Mr. Madison, staff is recommending the addition of a "safe harbor" provision, similar to that already included in the standards for extended family relationships and for information about relationships with an administering provider organization, to address the difficulty arbitrators face in obtaining information about the associates of the lawyers who are representing the parties in the arbitration. Proposed new 9(c) would clarify what arbitrators must do to fulfill their duty of inquiry about relationships with such associates.
Luella Nelson (individually)	7 General Lawyers/ Parties should have corresponding duty to disclose	There is a lack of corresponding duties on the part of the parties or their representatives to provide information necessary to an informed disclosure. Much of the information arbitrators are required to disclose is not readily available to the them. Ms. Nelson suggests that the Standards make attorneys ethically obligated to (a) notify arbitrators at the time of selection whether the case is one governed by the Standards and (b) if it is, give arbitrators the information they will need to satisfy their disclosure obligations. Ms. Nelson also suggests that it would facilitate arbitrator selection if the Standards made attorneys ethically obligated to notify the other side of disclosable events under Standard 7(b) when an arbitrator's name has been proposed.	See response to comments of Ms. Glick, above.
Louise A.	7	The burden of disclosure should be placed upon the parties or	See response to comments of Ms. Glick, above.

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LaMothe	General Lawyers/ Parties should have corresponding duty to disclose	attorneys who supposedly gain an advantage by having some connection to the arbitrator or the arbitrator's family, rather than upon the arbitrator. The comment 7 that "it is good practice for an arbitrator to ask each participant" to disclose is insufficient.	
James R. Madison	7 General Lawyers/ Parties should have corresponding duty to disclose	Provide for the situation in which a law firm knows of information that ought to be disclosed, but the arbitrator does not. Suggestion: Provide that, if the arbitrator (i) discloses information of which he or she is aware, for example, acquaintanceship with or previous cases involving a lawyer for a party and (ii) makes written inquiry of the lawyer's law firm as to whether there are any others and (iii) discloses both the inquiry and the response (or lack of response), the arbitrator will have satisfied the disclosure requirement.	See response to comments of Ms. Glick, above.
Gail Hillebrand (Consumers Union) **(4-04-02)**	7 General Other	The requirement for a summary of information when more than five prior or pending cases are being disclosed under Standard 7 is an important feature to consumers, particularly when the other party is a very frequent user or the consumer is unrepresented.	No response required.
Ruth V. Glick (California Dispute Resolution Council)	7 General Other	Council should make available information about computer conflicts checks software to aid in proper disclosure of prior arbitration and mediation cases. Council should provide a checklist to aid arbitrators in their disclosure requirements.	While we do not have information about available conflict-check software at this time, staff anticipate preparing an educational pamphlet discussing the arbitrator's disclosure obligations under the standards.
Francis O. Spalding	7 Missing Coverage	Section 12 of the Revised Uniform Arbitration Act arguably requires more disclosures than the Standards, including, for example: • a non-law-related business relationship between the arbitrator's spouse and a lawyer representing a party in a pending arbitration; and • the coincidental offer of a summer clerkship to the arbitrator's son-in-law by the law firm representing a party in a pending arbitration. The standards do not address disclosures of relationships between co-arbitrators on a multi-arbitrator panel and which might give rise to a perception of partiality	Like the disclosure provisions in the Revised Uniform Arbitration Act (UAA), standard 7(b) [7(d) in the proposed revision] establishes a general, overarching criterion for matters that must be disclosed by arbitrators and then provides examples of typical relationships and interests that fall within that general criterion. The general criterion articulated in the standards is "matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed arbitrator would be able to be impartial." Thus, even if a specific type of relationship is not listed among the examples listed in the standard, the relationship would still need to be disclosed if is could cause a person aware of it to reasonably entertain a doubt that the arbitrator would be able to be impartial. Furthermore, standard 7(b)(7) [renumbered 7(d)(8) in the proposed revision] specifically requires arbitrators to disclose any

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			professional relationship that the arbitrator or a member of the arbitrator's immediate family has or has had with a party or lawyer for a party (if not already disclosed under other provisions of standard 7).
Lewis L. Maltby (National Workrights Institute)	7b Reasonable Inquiry	Requiring an arbitrator to seek out information they do not have which might be prejudicial is pointless, if not counterproductive. It may also be inconsistent with section 1281.9, which requires arbitrators to disclose information that could cause a person "to reasonably entertain a doubt that the proposed neutral arbitrator would be able to be impartial" since a person could not reasonably believe that information the arbitrator does not know would influence his or her decision.	Staff believes that it is sound policy to include a duty to make reasonable efforts to inform oneself about matters that need to be disclosed. Many other sets of arbitrator ethics standards, including ABA/AAA Code of Ethics for Arbitrators in Commercial Disputes, the Model Rule of Professional Conduct for the Lawyer as Third-Party Neutral proposed by the CPR-Georgetown University Commission on Ethics and Standards in ADR and JAMS' Ethics Guidelines for Arbitrators, contain similar requirements that arbitrators make reasonable efforts to inform themselves about matters that have to be disclosed. Such a duty appears to be generally considered a necessary and appropriate element in promoting pubic confidence in the arbitration process.
State Bar Committee on Professional Responsibility and Conduct	7b Reasonable Inquiry	Standard 7(b) appears inconsistent with 7(d), because the former requires disclosure of an extended family member's relationship with a party to the arbitration but the later provides that an arbitrator can comply with this rule by signing a declaration showing that the arbitrator has made inquiry to people living in his or her household. COPRAC thinks the rule would be more clear and consistent in purpose, if it stated that the arbitrator must disclose his or her *actual knowledge* of family relationships, and perhaps imposed a duty to inquire of the members of his or her immediate household concerning such relationships. COPRAC suggests that Rule 3-310(B) of the California Rules of Professional Conduct provides a useful analogy. COPRAC is concerned that standard 7 expands the duty of inquiry applying to financial interests under 170.1(a)(3) to all matters that must be disclosed by the arbitrator. The standards obligate an arbitrator to inform him or herself of matters that must be disclosed from nomination until conclusion of the arbitration, while a judge is only obliged to inform himself or herself of his or her personal and fiduciary interests and those of his or her spouse and minor children living in the household. Arbitrators can not reasonably be expected to track the current	See response to comments of Mr. Maltby, above. Staff are recommending that all of the provisions that relate to an arbitrator's duty of inquiry be moved from standard 7 into new standard 9. This should make the relationship between these provisions clearer and easier to understand. It should also make standard 7 shorter and easier to understand. Staff are also recommending that standard 7(e), which provides that and arbitrator must disclose matters of which he or she is aware at the time disclosures are required to be made, be moved to the beginning of standard 7. Staff are recommending the adoption of new standard 9(c) to address the difficulty arbitrators face in obtaining information about the associates of the lawyers who are representing the parties in the arbitration. Proposed new 9(c), similar to the provision already included in the standards for extended family relationships and for information about relationships with an administering provider organization, would clarify what arbitrators must do to fulfill their duty of inquiry about relationships with such associates.

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		firm affiliations of all lawyers with whom they previously had a relationship. It would also be difficult for arbitrators to discern that this is required, because it requires noting and applying the definition of "lawyer for a party."	
Kenneth E. Owen	7b Reasonable Inquiry	An arbitrator cannot be influenced by a relationship of which he or she is unaware, and ought not be obligated to search for facts which but for the search would not affect his or her impartiality. The parties should inform arbitrators of sufficient facts and the names of all persons involved (not simply the parties) so that he or she can disclose facts and relationships known to the arbitrator.	See response to comments of Mr. Maltby, above.
Deborah Rothman	7b Reasonable Inquiry	The requirement that an arbitrator "make a reasonable effort to inform himself" is vague and impossibly burdensome. The provision would require this commentator to track down numerous cousins, many of whom she has not seen in over 30 years, and find out what stock they own.	See response to comments of Mr. Maltby, above. Standard 7(d) [renumbered 9(b) in the proposed revision] specifies that an arbitrator's duty of inquiry concerning members of his or her extended family is limited to asking members of his or her household about these relationships.
Kathryn Page Camp (National Futures Association)	7b1	Concur with this standard	No response necessary.
Kathryn Page Camp (National Futures Association)	7b2	Concur with most of this standard Should be limited to family members listed in 170.1(a)(5) and members of the arbitrator's extended family who live in the arbitrator's household	Staff agree and are recommending that the standard be amended to apply only to those family members listed in Code of Civil Procedure section 170.1(a)(5).
Louise A. LaMothe	7b2	The disclosure requirements concerning the arbitrator's former spouse in unexplained. No apparent purpose is served by requiring an arbitrator who has long been divorced and had no further contact with her former spouse to contact him to inquire whether he is currently associated with a lawyer in the arbitration.	Code of Civil Procedure section 170.1(a)(5) specifically requires these disclosures concerning former spouses. The council does not have the authority to eliminate this statutory obligation. Staff recommends that this comment be transmitted to the Legislature.
State Bar Committee on Professional Responsibility and Conduct	7b2A	COPRAC does not understand why a special definition of "a lawyer in the arbitration" is necessary for lawyers who "personally advised or *in any way* represented" a public agency "concerning the factual or legal issues in the arbitration" and believes this further "muddies the water." Additionally, the meaning of "factual and legal issues in the arbitration" is not clear to COPRAC, and could apply to representation of a public agency on the same abstract legal	Staff are recommending that this "special definition" be deleted from 7(b)(2) and that the substance of this requirement, which is based on Code of Civil Procedure section 170.1, be moved to new standard 7(d)(7). Staff believe that this will make both provisions clearer and more closely track Code of Civil Procedure section 170.1. The intent was that the provision of 7(d)(1) would apply

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		issue, whereas we assume the definition is meant to refer to particular legal matters. COPRAC recommends that this definition be deleted and the general rules be applied, or that if a policy reason requires different treatment concerning representation of public agencies, that this be addressed in a special section. COPRAC believes that because 7d1 does not apply to 7b2, arbitrators would be required to make reasonable inquiry of all members of their extended family concerning whether any of them had ever "served as a lawyer for or as an officer of a public agency [and] personally advised or in any way represented the public agency concerning the factual or legal issues in the arbitration."	to arbitrators' obligations under 7(b)(2). Staff believe that the recommended move of all of the provisions concerning an arbitrator's duty of inquiry to new standard 9 will clarify this relationship.
Kathryn Page Camp (National Futures Association)	7b3	Should be limited to current or relatively recent relationships (e.g. 2 yrs) and should not extend beyond the parties and the lawyers in the arbitration.	7(b)(3) simply restates an existing statutory obligation under Code of Civil Procedure section 1281.9. Code of Civil Procedure section 1281.85 specifically prohibits the Judicial Council from limiting any existing statutory disclosure requirement. Therefore, staff believes the council does not have the authority to narrow the obligation as suggested by the commentator. However, staff recommends that the comments concerning the breadth of the disclosure requirement be transmitted to the Legislature.
State Bar Committee on Professional Responsibility and Conduct	7b3	The limited definition of significant personal relationship as including "a close personal friendship" is unclear, and would require that an arbitrator disclose a seemingly causal personal connection with a party or lawyer for a party (which includes affiliated lawyers) or taking the chance that the relationship might subsequently be deemed significant, leading to the overturning of an award for failure to disclose. COPRAC suggests that a standard based on the arbitrator's actual knowledge would be more practical, because to comply with this rule, members of the arbitrator's immediate family would need to review a roster of each law firm participating in the arbitration.	Please see response to comments of Ms. Camp, above and to the State Bar Committee's earlier comments concerning the duty of inquiry. The term "significant personal relationship" is taken directly from Code of Civil Procedure section 1281.9 and is not defined in that statute. Arbitrators will, therefore, have to exercise some judgment about what is a "significant" relationship.
Lewis L. Maltby (National Workrights Institute)	7b3	The arbitrator may not know of significant personal relationships between an immediate family member and a lawyer in the case or other lawyer in their firm.	Please see response to comments of Ms. Camp, above and to the State Bar Committee's earlier comments concerning the duty of inquiry.
Luella Nelson (individually)	7b4	Arbitrators should not be required to make disclosures concerning collective bargaining cases, consistent with CCP	Staff agrees and is recommending the amendment suggested by Ms. Nelson.

Commentator	Section	Summary of Comment	Staff Response
		§1281.9 and it's legislative history. Suggestion: Insert the term "noncollective bargaining" wherever the word "case" or "prior case" appears in Standards 7(b)(4) and (5) and 10(b)-(d), and the word "covered" each time the Standards intend to refer to the types of arbitrations covered by these Standards.	
Luella Nelson (obo San Francisco Bar Labor & Employment Section)	7b4	The term "noncollective bargaining cases" should be inserted to make clear that an arbitrator is not required to make disclosures with regard to prior or prospective engagements arising form disputes under collective bargaining agreements.	Please see response to comments of Ms. Nelson, above.
Roderick M. Thompson	7b4	Standard 7(b)(4) provides no guidance concerning whether it is necessary to report prior cases where the arbitrator is appointed, but the case is settled without the arbitrator having substantive contact with the parties.	Staff are proposing that 7(b)(4) [renumbered 7(d)(4) in the proposed revision] be amended to clarify what information must be disclosed about all prior arbitrations and what information must be disclosed only about those cases arbitrated to conclusion.
Kenneth E. Owen	7b4A	Standard 7b4A exacerbates the uncertainty and difficulty created by CCP § 1281.9 concerning in several respects: • 1281.9 applies only to arbitrations that result in an award, but the Standard includes serving in an arbitration that does not result in an award • Standard 2l omits "or law firm" from the definition in 1281.9(c) • The standard is unclear as to the meaning of "currently" associated, and the data base that would be required to determine and make the required disclosures is not available. Standard 7(b)(4)(A) should be rewritten to make clear that the only disclosure required is prior arbitrations involving lawyers whose names appear on the arbitration demand and response and their law firms, and that there is no requirement to disclose any arbitrations involving other lawyers in those firms or their prior associated firms or lawyers. Otherwise, the burden of identifying lawyers associated in the practice of law with a lawyer for a party should be placed on the parties counsel, and the arbitrator only required to respond to names on such lists.	Code of Civil Procedure section 1281.9 requires that arbitrators disclose the names of the parties in all pending or prior arbitrations in which they were either a neutral arbitrator and the arbitration was one involving a party or a lawyer for a party or they were a party arbitrator selected by the party or lawyer for a party in the current arbitration. The statutory definition of "lawyer for a party" includes any lawyer or law firm associated in the practice of law with the lawyer hired to represent the party. Code of Civil Procedure section 1281.85 specifically prohibits the Judicial Council from limiting any existing statutory disclosure requirement. Therefore, staff believes the council does not have the authority to narrow the obligation as suggested by the commentator. However, staff recommends that the comments concerning the breadth of the disclosure requirement be transmitted to the Legislature. Staff are recommending that the definition of "lawyer for a party" be amended as suggested by Mr. Owen to make it consistent with the statute and also to address concerns about the possibility that it might be interpreted to include lawyers hired to represent the parties for

Commentator	Section	Summary of Comment	Staff Response
			purposes other than the arbitration. Staff is also recommending the adoption of new standard 9(c) to address the difficulty arbitrators face in obtaining information about the associates of the lawyers who are representing the parties in the arbitration. Proposed new 9(c), similar to the provision already included in the standards for extended family relationships and for information about relationships with an administering provider organization, would clarify what arbitrators must do to fulfill their duty of inquiry about relationships with such associates.
Kathryn Page Camp (National Futures Association)	7b5	These disclosures are not required by the CCP and could be burdensome. The burden of disclosing the existence of other dispute resolution proceedings in which the arbitrator served as a dispute resolution neutral outweighs the benefit.	While Code of Civil Procedure section 1281.9 does not currently address disclosure of pending or prior dispute resolution services other than arbitration, section 1281.85 specifically requires that the standards adopted by the council address the disclosure of prior service as an arbitrator *or other dispute resolution neutral.* Therefore, staff believes that the standards must address this topic.
Frances L. Diaz	7b5	Reconsider time frame for which disclosures required. Going back only two years is unfair because all lawyers are required to maintain their records for a period of at least five years.	The two-year period was included in the standards because it tracks the disclosure obligations of judicial arbitrators. Code of Civil Procedure section 1281.85 specifically requires that the standards adopted by the council be consistent with the standards for judicial arbitrators. Staff therefore believes that the two-year time frame is appropriate and should not be changed
Ruth V. Glick (California Dispute Resolution Council)	7b5	Arbitrators who volunteer their time for courts in judge pro tem positions or as pro bono arbitrators or mediators in court-connected programs should be excluded.	Staff is recommending that this standard be amended to require disclosure only when an arbitrator received or expects to receive some form of compensation for these dispute resolution services.
Luella Nelson (individually)	7b5	Arbitrators should not be required to make disclosures concerning collective bargaining cases, consistent with CCP §1281.9 and it's legislative history. Suggestion: Insert the term "noncollective bargaining" wherever the word "case" or "prior case" appears in Standards 7(b)(4) and (5) and 10(b)-(d), and the word "covered" each time the Standards intend to refer to the types of arbitrations covered by these Standards.	Staff agrees and is recommending the amendment suggested by Ms. Nelson.
Luella Nelson (obo San Francisco Bar Labor &	7b5	The term "noncollective bargaining cases" should be inserted to make clear that an arbitrator is not required to make disclosures with regard to prior or prospective engagements arising form disputes under collective bargaining agreements.	Please see response to comments of Ms. Nelson, above.

Commentator	Section	Summary of Comment	Staff Response
Employment Section)			
Roderick M. Thompson	7b5	Disclosure obligation concerning matters involving any lawyer "who is currently associated in private practice with a lawyer in the arbitration" imposes significant burden where lawyer is associated with a large firm. Suggestion: Require disclosure only where the arbitrator knows a lawyer in the prior proceeding is associated in the private practice of law with a lawyer in the arbitration.	This provision was drafted to mirror the existing statutory disclosure obligation concerning pending and prior arbitrations. Staff is recommending the adoption of new standard 9(c) to address the difficulty arbitrators face in obtaining information about the associates of the lawyers who are representing the parties in the arbitration. Proposed new 9(c), similar to the provision already included in the standards for extended family relationships and for information about relationships with an administering provider organization, would clarify what arbitrators must do to fulfill their duty of inquiry about relationships with such associates.
Kathryn Page Camp (National Futures Association)	7b6	National Futures Association agrees with this standard.	No response required.
Kathryn Page Camp (National Futures Association)	7b7	National Futures Association agrees with this standard.	No response required.
Kathryn Page Camp (National Futures Association)	7b8	National Futures Association agrees with this standard.	No response required.
Kenneth E. Owen	7b8	Standard 7(b)(8) should only require disclosure of a direct financial interest, such as ownership of equity stock in a party, rather than mutual fund ownership. Alternatively, delete the definition of "financial interest" in 2(h) and require disclosure of "substantial financial interest" in 7(b)(8).	Staff believes that this concern is addressed by the definition of "financial interest" in Code of Civil Procedure section 170.5, which is made applicable to these standards under standard 2(i). Section 170.5 provides: "Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in those securities unless the judge participates in the management of the fund."
Kathryn Page Camp (National Futures Association)	7b9	National Futures Association agrees with this standard.	No response required.
Kathryn Page Camp	7b10	National Futures Association agrees with this standard.	No response required.

Commentator	Section	Summary of Comment	Staff Response
(National Futures Association)			
Kathryn Page Camp (National Futures Association)	7b11	National Futures Association agrees with this standard.	No response required.
State Bar Committee on Professional Responsibility and Conduct	7b11	Because 7d1 does not apply to 7b11, the proposed arbitrator is required to inform himself or herself as to each extended family member's possible knowledge of disputed facts relevant to the arbitration. COPRAC believes that this requirement of inquiry of extended family members is not reasonable, and that the nature of questions that would have to be posed could undermine the privacy as well as efficiency of contractual arbitration.	Staff believes this concern has been addressed by the clarification of the duty of inquiry in proposed new standard 9(b).
William E. Beringer	7b12 Necessity	In the context of "consumer adhesion contracts" the parties must be required to accept the arbitrator selected by the provider organization on a rotational basis, with no right of rejection except for demonstrated bias or misconduct. This is necessary to overcome the advantages that the retailer has as a result of its initial contract with the provider organization and it's ability, over time, to determine which arbitrators on the panel are more likely to decide in their favor.	This is a suggestion for modifying requirements for selection of an arbitrator in consumer arbitrations and thus is outside the scope of ethics standards for arbitrators. Staff recommends that this suggestion be transmitted to the Legislature.
Rob Cartwright, Jr. (Consumer Attorneys of California)	7b12 Necessity	Consumer Attorneys would like to emphasize particularly the absolute necessity that the final rules maintain arbitrator disclosure of provider information, as contained in the existing rule, and states that the Judicial Council has clear statutory authority to address this issue.	Staff is recommending that 7(b)(12) [renumbered standard 8 in the proposed revision] be retained, but be amended to make it clearer.
Gail Hillebrand (Consumers Union)	7b12 Necessity	The provider organization disclosure provisions of Standard 7b12 are a key part of the Ethics Standards for consumers. The Standards respond appropriately to the new reality that arbitration is displacing access to the court system across a wide variety of consumer contracts.	Please see response to comments of Mr. Cartwright, above.
Gail Hillebrand (Consumers Union) (4-04-02)	7b12 Necessity	Standard 7(b)(12) is particularly important to create a fair environment and level playing field for consumer arbitrations, and to overcome skepticism over the actual and apparent links between dispute resolution provider organizations and large "repeat players. Disclosures will help consumers even if the consumer can not change the pre-selected provider organization. The required disclosures concerning provider organizations are	Please see response to comments of Mr. Cartwright, above.

Commentator	Section	Summary of Comment	Staff Response
		significantly narrower than they could be.	
Robert A. Holtzman (4/2/02)	7b12 Necessity (Lack	Except for subdivision (12)(a), the disclosures have absolutely nothing to do with the qualifications, interests, relationships, independence, bias or neutrality of the arbitrator. The enormous burden imposed on provider organizations is to be borne in every consumer case, whether or not the parties have any interest in avoiding arbitration. There is no empirical basis for mandating the extent of disclosure in consumer cases.	The legislative history of the bill requiring the adoption of the ethics standards shows that the Legislature was particularly concerned about fairness in the context of arbitrations taking place as the result of contracts of adhesion. In such arbitrations, there is likely to be a great disparity between the parties in terms of access to information about and control over the arbitration process. The party that imposes the contractual obligation has selected the arbitral forum, may have participated in drafting the rules of that forum and be able to change those rules, may have participated in selecting the panel of arbitrators available in that forum and be able to change the composition of the panel, and is likely to have experience in using both that forum and particular arbitrators on the panel. The weaker party will not have had any of this participation or experience. Furthermore, where the stronger party requires the use of a particular forum, the natural tendency is for the weaker party to suspect the fairness of that forum. The disparity in information and control, combined with the tendency to suspect the imposed forum, contributes to the weaker party, as well as the public at large, mistrusting the arbitral process and, as the representative of that process, the arbitrator. To foster public confidence in the arbitration process in these circumstances, therefore, it may be appropriate to impose additional obligations on the arbitrator. Based on this premise, 7(b)(12) imposed additional disclosure obligations on arbitrators in these circumstances. The issues raised by this comment were also raised by commentators when the draft of these standards was circulated last winter. These earlier comments were outlined in the report submitted to the council in April 2002. After weighing those earlier comments, the council voted to adopt this standard. Staff does not believe that any of the current comments identify new burdens or risks that the council did not weigh when it adopted this standard, and thus staff believes these comments do not warrant the council's changing its position concerning this standard.
William K. Slate II (American	7b12 Necessity	There is no factual foundation that would support the necessity for these extraordinarily burdensome disclosure requirements.	Please see response to comments of Mr. Holtzman, above.

Commentator	Section	Summary of Comment	Staff Response
Arbitration Association) (8-16-02)	(Lack)		
William K. Slate II (American Arbitration Association) (4-8-02)	7b12 Necessity (Lack)	Mr. Slate attached a copy of his April 8, 2002 correspondence, asserting that Standard 7(b)(12) is not authorized by legislation and should be eliminated. The rationale for requiring provider disclosures arises from the following premises which are factually unsubstantiated • that arbitration providers want the corporate entity to be treated with favoritism by the arbitrator • that the arbitrator knows that preference • that the arbitrator, to comply with the provider's wishes, will violate the arbitrator's code of ethics by favoring the corporation	Please see response to comments of Mr. Holtzman, above. Staff believe that this standard is within the bounds of the council's authority under Code of Civil Procedure section 1281.85.
William K. Slate II (American Arbitration Association) (2-21-02)	7b12 Necessity (Lack)	The assertion which has been made that a relationship between the provider and a party or lawyer in the case, could affect the arbitrator's award has not been substantiated. Exclude non-profit providers whose neutrals are independent—there is no potential for conflict in this situation.	Please see response to comments of Mr. Holtzman, above.
James C. Sturdevant	7b12 Necessity	Mr. Sturdevant would like to emphasize particularly the absolute necessity that the final rules maintain arbitrator disclosure of provider information, as contained in the existing rule, and states that the Judicial Council has clear statutory authority to address this issue.	Staff is recommending that 7(b)(12) [renumbered standard 8 in the proposed revision] be retained, but be amended to make it clearer.
Suzanne Valente, Stephen Golub	7b12 Necessity	Commentators write of their personal experience and grievances in an AAA arbitration of a fee dispute with their former attorney, who was also an AAA panel member. They feel "[I]t was a wholly unfair and biased process, from start to finish" and "that this was a good old boy network between attorneys who are both panelists for this same arbitration organization." Suggestion: "An attorney who serves as a panelist should not be able to bring his or her disputes to that same arbitration organization." Ms. Valente expresses particular concern that the arbitrator did not allow discovery as provided for in the arbitration agreement, and that this prevented she and her husband from proving their case.	Staff believe that the type of relationship that was of concern in Ms. Valente's arbitration would have to be disclosed under standard 7(b)(12).
Kathryn Page	7b12	Standard 7b12 does not apply to National Futures Association	Please see response to comments of Mr. Holtzman,

Commentator	Section	Summary of Comment	Staff Response
Camp (National Futures Association)	Burden on Arbitrators	proceedings because members aren't permitted to use predispute arbitration agreements; however this disclosure requirement could be extremely burdensome for arbitrators serving at other national arbitration fora. Suggest reconsidering Standard 12 in its entirety.	above. Note that Standard 7(b)(12)(F) [renumbered standards 8(a) and 9(e)] permits arbitrators to fulfill their obligations by relying on information supplied by the administering provider organization.
Warren Conklin (American Arbitration Association)	7b12 Burden on Arbitrators	The neutral should have an independent duty to disclose any past dealings with either the attorney(s) or the parties. The duty to disclose information about other contacts the provider organization may have had with the attorneys or the parties should be placed upon the entity with possession of the information.	As stated in the April 2002 report to the council, staff agrees that direct regulation of provider organizations might more efficiently address some of the concerns about bias or the appearance of bias created when provider organizations have relationships with parties or attorneys in an arbitration they are administering. Because the council's charge is to adopt ethics standards for arbitrators, however, these standards cannot, and do not attempt to, establish disclosure, disqualification, or any other requirements for provider organizations. In the absence of direct regulation of provider organizations, staff believes it is appropriate for these standards to require that arbitrators make disclosures regarding provider organization relationships. Code of Civil Procedure section 1281.95 already requires arbitrators in certain construction disputes to disclose whether the provider organization has a personal or professional affiliation with either party and whether the provider organization has been selected or designated by either party in another transaction. Thus, the Legislature has already made the fundamental policy decisions (1) that information about the relationships between provider organizations and the parties should be disclosed and (2) that it is appropriate for the burden of such disclosures to be placed on arbitrators. For the reasons outlined in the response to Mr. Holtzman's comments above, that requiring this information be disclosed will improve public confidence in the integrity and fairness of the arbitration process. Note that Standard 7(b)(12)(F) [renumbered standards 8(a) and 9(e)] permits arbitrators to fulfill their obligations by relying on information supplied by the administering provider organization.
State Bar Committee on Professional Responsibility	7b12 Burden on Arbitrators	Standard 7b12, and particularly (D), imposes an unreasonable burden on the arbitrator, which should fall on the provider organization.	Please see response to comments of Mr. Conklin, above.

Commentator	Section	Summary of Comment	Staff Response
and Conduct			
Gail Hillebrand (Consumers Union) (4-04-02)	7b12 Burden on Arbitrators	The individual arbitrator is, and must be, responsible for creating an environment of fairness and evenhandedness in the arbitration process.	Please see response to comments of Mr. Conklin, above.
Lewis L. Maltby (National Workrights Institute)	7b12 Burden on Arbitrator (Information Unavailable)	The arbitrator generally does not have and may be unable to obtain information concerning provider organizations.	Please see response to comments of Mr. Conklin, above.
Kenneth E. Owen	7b12 Burden on Arbitrator (Information Unavailable)	Standard 7(b)(12) imposes an oppressive and unfair duty on the arbitrator, and requires compliance not within his ability. This provision should be removed, and the Legislature left to address the issue of provider organizations. If the concept retained, it should be limited to arbitrators who have an ownership interest in the provider organization or are in a controlling position that allows him or her to obtain the information to be disclosed. Alternatively, place the duty on the party who has the relationship.	Please see response to comments of Mr. Conklin, above.
Hon. Philip M. Saeta	7b12 Burden on Arbitrator	If the Legislature wants to control provider organizations, so be it, but it seems wrong and basically impossible for the Council to require arbitrators to be the ones to give this information.	Please see response to comments of Mr. Conklin, above.
Robert M. Shafton	7b12 Burden on Arbitrator (Information Unavailable)	The arbitrator should not be responsible to report information that only the provider organization might know.	Please see response to comments of Mr. Conklin, above.
Francis O. Spalding	7b12 Burden on Arbitrator (Information Unavailable)	The standards oblige the arbitrator to on an ongoing basis volumes of information wholly within the knowledge of a person or entity not obliged to make a disclosure of it.	Please see response to comments of Mr. Conklin, above. Note the continuing duty of disclosure under standard 7 does not apply to disclosures under 7(b)(12).
William K. Slate II (American Arbitration Association) (2-21-02)	7b12 Burden on Provider Organization	Adoption of (b)(6) will lead to unintended consequences, in particular, the elimination of large providers who cannot comply, including non-profits like AAA, whose size and decentralized structure make compliance impossible (to the extent of providing neutrals with the information they need). Adoption will introduce significant uncertainty into the arbitration process, undermine finality, and discourage arbitration in violation of the FAA.	Please see response to comments of Mr. Conklin, above.
John Kagel (10-14-02)	7b12 Indirect	The Council should remove the indirect regulation of providers since the Legislature has now addressed the issue. Arbitrators	Staff has reviewed all the arbitration provider–related bills enacted during the last legislative session. These

Commentator	Section	Summary of Comment	Staff Response
	regulation	must, nevertheless disclose any financial interest he or she has in a provider.	bills neither prohibit nor require direct disclosure by provider organizations of most of the relationships and affiliations that must be disclosed under standard 7(b)(12), and therefore staff does not believe these bills warrant the elimination of this standard. However, in response to the enactment of Assembly Bill 2574, staff is recommending deleting arbitrators' obligation under standard 7(b)(12) to disclose in consumer arbitrations whether a dispute resolution provider organization administering the arbitration has a financial interest in a party or attorney in the arbitration or whether a party or attorney has a financial interest in that provider organization. This bill prohibits provider organizations from administering consumer arbitrations where such relationships exist.
William K. Slate II (American Arbitration Association) (4-8-02)	7b12 Indirect Regulation	Standard 7(b)(12) constitutes unauthorized indirect regulation of providers.	Staff believe that this standard is within the bounds of the council's authority under Code of Civil Procedure section 1281.85.
William K. Slate II (American Arbitration Association) (2-21-02)	7b12 Indirect Regulation	The Judicial Council should be reluctant to impose ethical requirements on arbitrators for information over which they have no control. Even if the legislation encompasses disclosures by providers through arbitrators, the directive should exclude not-for-profit organizations where the arbitrators are independent of the provider.	Please see response to comments of Mr. Conklin, above.
Rob Cartwright, Jr. (Consumer Attorneys of California)	7b12 Statutory Authority	The Judicial Council has clear statutory authority to address this issue.	No response required.
Robert A. Holtzman (4/2/02)	7b12 Statutory Authority	This area does not form part of the mandate to the Council.	Staff believe that this standard is within the bounds of the council's authority under Code of Civil Procedure section 1281.85. Please see response to Mr. Holtzman's earlier comments, above.
William K. Slate II (American Arbitration Association) (8-16-02)	7b12 Statutory Authority	The enabling legislation does not authorize the Judicial Council to create ethical standards for provider organizations. A motivating force behind the standards and pending state legislation is the bias of its sponsors against arbitration. This is contrary to the FAA and invites a legal challenge on federal preemption grounds, which the state will have to defend on	Please see response to comments of Mr. Holtzman, above.

Commentator	Section	Summary of Comment	Staff Response
		behalf of the Judicial Council members. The AAA urges the Council to reject standard 7b12. Mr. Slate also attached copies of his February 21 and April 8, 2002 correspondence asserting that Standard 7(b)(12) is not authorized by legislation and should be eliminated.	
William K. Slate II (American Arbitration Association) (2-21-02)	7b12 Statutory Authority	The enabling legislation is directed to persons serving as neutral arbitrators, not to provider organizations.	Please see response to comments of Mr. Holtzman, above.
Francis O. Spalding	7b12 Statutory Authority	Nothing in the Legislature's mandate to the Judicial Council in any way directs attention to provider disclosures.	Please see response to comments of Mr. Holtzman, above.
Gail Hillebrand (Consumers Union)	7b12 Impact of Recent Legislation	Pending legislation does not obviate necessity for the standards.	Please see response to comments of Mr. Kagel, above.
Robert A. Holtzman (4/2/02)	7b12 Impact of Recent Legislation	Bills pending before the Legislature relating to possible regulation of provider organizations and hearings are being conducted to inquire into the need for such regulation.	Please see response to comments of Mr. Kagel, above.
John Kagel (10-14-02)	7b12 Impact of Recent Legislation	The Council should remove the indirect regulation of providers since the Legislature has now addressed the issue.	Please see response to comments of Mr. Kagel, above.
William K. Slate II (American Arbitration Association) (8-16-02)	7b12 Impact of Recent Legislation	The recent activity of the California legislature supports and reinforces the AAA position that the enabling legislation does not authorize the Judicial Council to create ethical standards for provider organizations.	Please see response to comments of Mr. Kagel, above.
Micki Callahan (Department of Industrial Relations, State Mediation and Conciliation Service)	7b12 Scope	Public agencies that do nothing more than provide lists be exempted from the definition of “dispute resolution provider organization.” Arbitrations arising out of collective bargaining agreements should not be subject to disclosure. (Standard appears to require arbitrators of private employment disputes to disclose labor arbitrations involving the same parties.)	Staff are recommending that the definition of “dispute resolution provider organization” be amended to apply only to nongovernmental entities.
Gail Hillebrand (Consumers Union)	7b12 Scope	Refrain from making any changes in the standards. Although Consumers Union sees the standards as narrower than optimal, other groups see them as too broad.	Staff is recommending that 7(b)(12) [renumbered standard 8 in the proposed revision] be retained, but be amended to make it clearer.

Commentator	Section	Summary of Comment	Staff Response
Gail Hillebrand (Consumers Union) (4-04-02)	7b12 Scope	The required disclosures concerning provider organizations are significantly narrower than they could be.	Staff do not recommend expanding the scope of these disclosure obligations.
Hon. Philip M. Saeta	7b12 Scope	7b12A should be modified to indicate that it only applies where a provider organization is providing the arbitration. A "consumer arbitration" does not necessarily require a provider organization, and the caption usually does not control the language of a rule or statute.	Staff agree and are recommending that the standard be so clarified.
William K. Slate II (American Arbitration Association) (8-16-02)	7b12 Impact on Availability of Arbitration	If the Judicial Council decides to retain Standard 7(b)(12), the AAA will be unable to comply with these provisions and will be forced to withdraw from providing arbitration services to the consumers and employees of California.	Staff's understanding is that AAA is not currently planning to withdraw from California, but is working to assist its arbitrators in complying with these requirements.
William K. Slate II (American Arbitration Association) (2-21-02)	7b12 Impact on Availability of Arbitration	Adoption of (b)(6) will lead to unintended consequences, in particular, the elimination of large providers who cannot comply, including non-profits like AAA, whose size and decentralized structure make compliance impossible (to the extent of providing neutrals with the information they need). Adoption will introduce significant uncertainty into the arbitration process, undermine finality, and discourage arbitration in violation of the FAA	Please see response to comments of Mr. Slate, above.
Robert A. Holtzman (4/2/02)	7b12 General Opposition	7b12 should be stricken in its entirety.	Staff is recommending that 7(b)(12) [renumbered standard 8 in the proposed revision] be retained, but be amended to make it clearer.
Rob Cartwright, Jr. (Consumer Attorneys of California)	7b12Ai	Exclusive provider arrangements, solicitations of corporate clients in whom the provider organization has a financial investment, and provider firms which provide other services to business parties are matters of concern.	In response to the enactment of Assembly Bill 2574, staff is recommending deleting arbitrators' obligation under standard 7(b)(12) to disclose in consumer arbitrations whether a dispute resolution provider organization administering the arbitration has a financial interest in a party or attorney in the arbitration or whether a party or attorney has a financial interest in that provider organization. This bill prohibits provider organizations from administering consumer arbitrations where such relationships exist.
James C. Sturdevant	7b12Ai	Exclusive provider arrangements, solicitations of corporate clients in whom the provider organization has a financial investment, and provider firms which provide other services to business parties are matters of concern.	Please see response to comments of Mr. Cartwright, above.
Warren Conklin (American Arbitration	7b12B	The term "relationship" (between neutral and provider organization) is ambiguous, and should be defined. The standard should specify what must be disclosed [e.g. whether	Staff are recommending amendments to try to clarify what is meant by this term.

Commentator	Section	Summary of Comment	Staff Response
Association)		agreement is exclusive; whether neutral is on salary or whether a fee sharing agreement exists]. Mr. Conklin would strongly oppose requiring disclosure of anything other than the basic parameters of the relationship.	
Rob Cartwright, Jr. (Consumer Attorneys of California)	7b12Bi	Information about arbitrators' financial interests in the provider organization is important and should be disclosed to the parties.	In response to the enactment of Assembly Bill 2574, staff is recommending deleting arbitrators' obligation under standard 7(b)(12) to disclose in consumer arbitrations whether a dispute resolution provider organization administering the arbitration has a financial interest in a party or attorney in the arbitration or whether a party or attorney has a financial interest in that provider organization. This bill prohibits provider organizations from administering consumer arbitrations where such relationships exist.
James C. Sturdevant	7b12Bi	Information about arbitrators' financial interests in the provider organization is important and should be disclosed to the parties.	Please see response to comments of Mr. Cartwright, above.
Rob Cartwright, Jr. (Consumer Attorneys of California)	7b12Biii	Each provider had different rules and practices concerning the selection of neutrals and other matters. Tactical advantages of "repeat users" and the conflicts of interest resulting from repeat business must be confronted.	No response required.
James C. Sturdevant	7b12Biii	Each provider had different rules and practices concerning the selection of neutrals and other matters. Advantages of "repeat users" and the conflicts of interest resulting from repeat business must be confronted.	No response required.
Sharon Lybeck Hartmann (Office of the Independent Administrator)	7b12D	Clarify whether a neutral appointed on or after January 1, 2003 must disclose all cases closed since the provider organization began operating, or whether 7b12c limits disclosure to cases closed since July 1, 2002	Staff are recommending that 7(b)(12)(C) which specifies what cases must be disclosed, be integrated with other information about these cases in new standard 8(b)(1)(D) so that it is easier for readers to find.
Gail Hillebrand (Consumers Union) **(4-04-02)**	7b12E	The requirement for a summary of information when more than five prior or pending cases are being disclosed under Standard 7 is an important feature to consumers, particularly when the other party is a very frequent user or the consumer is unrepresented.	No response required.
State Bar Committee on Professional Responsibility and Conduct	7b12F	7b12F allows the arbitrator to mitigate an unnecessary burden by filling out boilerplate paperwork in each matter.	Staff believes that the integration of this requirement in new standard 9 will address some of COPRAC's concerns.
Kathryn Page Camp	7b13	National Futures Association agrees with this standard.	No response required.

Commentator	Section	Summary of Comment	Staff Response
(National Futures Association)			
Kenneth E. Owen	7b13	The exception for religious, government or non-profit youth organization should be eliminated.	This requirement, including the exception, is modeled on judicial arbitrators' disclosure obligation under canon 6(D)(2)(g) of the California Code of Judicial Ethics. Code of Civil Procedure section requires the standards adopted by the council to be consistent with the requirements for judicial arbitrators. In order to maintain that consistency, staff believes it is appropriate to track the exceptions in the canon applicable to judicial arbitrators.
Kathryn Page Camp (National Futures Association)	7b14	Fully support	No response required.
Kenneth E. Owen	7b14B & C	These matter should be a basis for refusing to serve, rather than for disclosure, and should be added to standard 6.	The matters in 7(b)(14) are disclosures currently required by statute. Making them grounds for declining appointment would substantially increase restrictions on arbitrators. Staff does not believe such a change is warranted.
Kathryn Page Camp (National Futures Association)	7c	Fully support	No response required.
Kenneth E. Owen	7c	These matters should be a basis for refusing to serve, rather than for disclosure, and should be added to standard 6.	When a draft of the standards was circulated for comment last winter, the items in 7(c) were included in standard 6 as matters requiring an arbitrator to decline appointment. Commentators at that time suggested that it was preferable for these matters to be disclosed and for parties to decide whether warrant disqualification.
Ruth V. Glick (California Dispute Resolution Council)	7c1	Who determines whether arbitrator is unable to perceive the evidence or conduct the proceedings because of impairment? (How can arbitrator determine if s/he is impaired?) Suggestion: Drop provision or clarify to require disclosure only if the arbitration "believes" s/he is unable to go forward because of an impairment	The language used in this provision tracks the language of Code of Civil Procedure section 170.1. Staff believe it is best to maintain consistency with that statutory language.
Lewis L. Maltby (National Workrights Institute)	7d1	Standard 7d greatly reduces the risk that an arbitrator will be penalized for an innocent mistake, however the list of questions she must ask her spouse is long and complicated. An arbitrator could easily leave out a question because she does not know it	Staff are recommending that the language of 7(d)(1) [renumbered 9(b) in the proposed revision] be amended to delete references to disclosure obligations and focus only on arbitrator's duty of inquiry. Please see

Commentator	Section	Summary of Comment	Staff Response
		is required, and would also be unprotected if she forgot to disclose a single fact reported to her by her spouse, no matter how insignificant. Standard 7d does not protect arbitrators if they fail to meet the impossible standards regarding disclosure of information about provider organizations.	responses to general comments about duty of inquiry above. 7(b)(12) [renumbered 9(e) in the proposed revision] addresses arbitrators duty of inquiry concerning relationships between his or her administering provider organization and the parties or attorneys.
Norman Brand	7d1	Standard 7d1 does not significantly mitigate the standard's tendency to reduce the finality of arbitration, because the arbitrator can still be accused of failing to seek the proper information from all members of his household, or of failing to disclose "all the information" within his knowledge**.**	Staff are recommending that the language of 7(d)(1) [renumbered 9(b) in the proposed revision] be amended to delete references to disclosure obligations and focus only on arbitrator's duty of inquiry. Please see responses to general comments about duty of inquiry above.
Kathryn Page Camp (National Futures Association)	7d1	Requiring the arbitrator to confirm in writing that he or she has sought and disclosed the information imposes additional burden without a corresponding benefit to the parties.	The intent is to benefit both parties and arbitrators by clarifying the extent of arbitrators' duty to inquire about these relationships. The writing provides a record for both parties and attorneys.
State Bar Committee on Professional Responsibility and Conduct	7d1	Because 7d1 does not apply to 7b2, arbitrators would be required to make reasonable inquiry of all members of their extended family concerning whether any of them had ever "served as a lawyer for or as an officer of a public agency [and] personally advised or in any way represented the public agency concerning the factual or legal issues in the arbitration." Because 7d1 does not apply to 7b11, the proposed arbitrator is required to inform himself or herself as to each extended family member's possible knowledge of disputed facts relevant to the arbitration. COPRAC believes that this requirement of inquiry of extended family members is not reasonable, and that the nature of questions that would have to be posed could undermine the privacy as well as efficiency of contractual arbitration.	The intent was that the provision of 7(d)(1) would apply to arbitrators' obligations under both 7(b)(2) and (b)(11). Staff believe that the recommended amendments to these provisions and the move of all of the provisions concerning an arbitrator's duty of inquiry to new standard 9 will clarify this relationship.
Ruth V. Glick (California Dispute Resolution Council)	7d1	Why is the Judicial Council requiring arbitrators to inform self and disclosure relationships involving his or her *former spouse?* When there is no financial relationship between former spouses, there is generally little contact and little inclination to establish contact. Suggestion: Former spouse should be dropped unless there is a financial relationship with the arbitrator.	Code of Civil Procedure section 170.1(a)(5) specifically requires that arbitrators make disclosures concerning relationships between an arbitrator's former spouse and a lawyer in the arbitration. 7(d)(1) [renumbered 9(b) in the proposed revision] simply clarifies the arbitrator's duty to inform him or herself about these relationships.
Micki Callahan (Department of Industrial Relations,	7d2	Arbitrations arising out of collective bargaining agreements should not be subject to disclosure. (Standard appears to require arbitrators of private employment disputes to disclose labor arbitrations involving the same parties.)	Staff believe that this concern will be addressed the recommendations to move subdivision 7(d) to the beginning of standard 7 and to add "noncollective bargaining" in front of references to "cases" and

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State Mediation and Conciliation Service)			"arbitrations" in standards 7 and 8.
Ruth V. Glick (California Dispute Resolution Council)	7d2	Clarify whether a labor arbitrator serving in a civil employment case involving lawyers and firms who appeared before him in a previous labor case (excluded from standards) must make the disclosures concerning those lawyers or firms.	Please see response to the comments of Ms. Callahan, above.
Jay Folberg (University of San Francisco School of Law) (7-29-02)	7d3	Clarify intent that arbitrator need not inform current arbitration participants of [new] offers of employment nor seek their approval before taking other cases involving one of them, provided the current case is not a consumer case, provided the current case is not a consumer case and the arbitrator has made the required disclosure pursuant to Standard 10(b) that he or she will entertain such offers.	Staff is recommending that this provision be amended to reflect the recommended deletion of standard 10(d). The revised provision would clarify that if an arbitrator has disclosed to the parties at the outset of the arbitration, as required by standard 10(b), that he or she will entertain offers of employment or professional relationships from a party or lawyer for a party while that arbitration is pending and the parties have not chosen to disqualify the arbitrator at that time, the arbitrator is not then also required to make a disclosure to the parties in that arbitration when he or she subsequently receives or accepts such an offer
Ruth V. Glick (California Dispute Resolution Council)	7d3	Clarify whether this provision means that an arbitrator need not disclose offers of employment in commercial cases, but must do so as required by Standard 10(d) in consumer cases.	Please see response to Professor Folberg's comments, above.
Sharon Lybeck Hartmann (Office of the Independent Administrator)	7d3	If 10(d) can be waived, does 7(d)(3) require a neutral who accepts a new case involving parties to a pending case to make the Standard 7 disclosures, and would this re-open the disqualification provisions of Standard 8? Can Standard 7(d)(3) be waived?	Please see response to Professor Folberg's comments, above.
Kathryn Page Camp (National Futures Association)	7e	Agree, however should clarify that the arbitrator's obligation to inform him or herself of disclosable matters only requires that checks be done at reasonable intervals or before major events in the arbitration process.	Staff is recommending that the references to a continuing duty to inform oneself of matters to be disclosed be deleted from this standard. The ABA/AAA standards, like these standards, make the duty to *disclose* a continuing duty, so that the arbitrator makes new disclosures when new matters arise or when he or she becomes aware of something that was inadvertently omitted from a prior disclosure. However, the ABA/AAA standards and other sets of arbitrator ethics standards do not make the duty of *inquiry* a continuing duty. Staff believe that, in the interests of clarity and reducing burdens on arbitrators, it is appropriate to follow the model set in these other standards.

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State Bar Committee on Professional Responsibility and Conduct	7e	The standards obligate an arbitrator to inform him or herself of matters that must be disclosed from nomination until conclusion of the arbitration, while a judge is only obliged to inform himself or herself of his or her personal and fiduciary interests and those of his or her spouse and minor children living in the household. The continuing duty to inform and disclose multiplies the difficulty arbitrators will have in complying with this rule. A continuing duty to disclose matters within the arbitrator's actual knowledge would be more reasonable and practical.	Please see response to comments of Ms. Camp, above.
Lewis L. Maltby (National Workrights Institute)	7f	There is no provision for extra time for disclosure if the arbitrator is in the hospital, on vacation, or in the middle of a multi day hearing. A party is free to argue that a disclosure should have been made sooner than 10 days under the "as soon as practicable" requirement. The lack of any safe harbor puts the arbitrator at risk, no matter how conscientious they have been.	Staff is recommending that the "as soon as practicable" language be deleted from this standard. The requirement for initial disclosures to be made within 10 days is from Code of Civil Procedure section 1281.9.
Frances L. Diaz	8	Disqualification provisions should provide that an arbitrator who has been asked to disqualify himself prior to a final award must allow the complaining party a fair opportunity to submit the reasons for disqualification before a disinterested arbitrator to decide whether or not disqualification is appropriate under the given circumstance	The disqualification provisions in this standard reflect Code of Civil Procedure section 1281.91's approach to disqualification, which provides for automatic disqualification when the party serves a notice of disqualification or, where a 170.1 matter exists, a duty for the arbitrator to disqualify him or herself upon a parties request. The statute does not establish a system for another neutral person to decide on requests for disqualification. Staff recommends that this suggestion be transmitted to the Legislature.
Lewis L. Maltby (National Workrights Institute)	8	The penalties for non-disclosure are too harsh, and there is no provision for making the penalty proportionate to the offense. Automatic disqualification for even a single unintentional failure to disclose information that would not concern the parties is too severe a penalty. The Standard provides no discretion for the courts to consider the seriousness of the failure or the arbitrator's motive. The arbitrator must be disqualified even if he or she accidentally fails to disclose a non-material detail over which neither party is concerned. The automatic disqualification procedure is in effect a peremptory challenge with no hearing to determine whether there is any ground for disqualification. This enables the parties	Please see response to comments of Ms. Diaz, above.

Commentator	Section	Summary of Comment	Staff Response
		to unfairly delay the process, particularly since there is no limit on the number of times a party can disqualify an arbitrator.	
Ruth V. Glick (California Dispute Resolution Council)	9	"Favor" is vague and should be dropped or defined.	The term "favor" appears in the Code of Judicial Ethics provisions that apply both to judges and to judicial arbitrators. Although the code does not contain a definition of this term, the absence of a definition does not appear to have created problems in the application of the code. Staff believes it would be best for these arbitrator ethics standards to use language that is consistent with the standards applicable to judicial arbitrators and therefore does not recommend any amendment to this provision.
Luella Nelson (individually)	10	Arbitrators should not be required to make disclosures concerning collective bargaining cases, consistent with CCP §1281.9 and it's legislative history. Suggestion: Insert the term "noncollective bargaining" wherever the word "case" or "prior case" appears in Standards 7(b)(4) and (5) and 10(b)-(d), and the word "covered" each time the Standards intend to refer to the types of arbitrations covered by these Standards.	Staff is not recommending the addition of "noncollective bargaining" here. This section does not require the disclosure of these cases, it requires the arbitrator to disclose if he or she will entertain offers of employment from a party or attorney while the arbitration is pending. Staff believes this should include whether the arbitrator will accept employment as an arbitrator in collective bargaining matters.
Luella Nelson (obo San Francisco Bar Labor & Employment Section)	10	The term "noncollective bargaining cases" should be inserted to make clear that an arbitrator is not required to make disclosures with regard to prior or prospective engagements arising form disputes under collective bargaining agreements.	Please see response to comments of Ms. Nelson, above.
Hon. Robert T. Altman	10 Opposition-General	Standard 10 should be eliminated.	Staff is recommending that standard 10(d) be eliminated, but that the remainder of standard 10 be retained.
Norman Brand	10 Opposition-General	Standard 10 has an unintended adverse impact of on collective bargaining arbitration.	Please see response to comments of Ms. Nelson and Hon. Altman, above.
Kathryn Page Camp (National Futures Association)	10b	Standard should be revised to state that the arbitrator must disclose if the arbitrator will accept employment and may not accept employment unless disclosure is made, to avoid possible vacatur if the arbitrator forgot to address the issue, but didn't accept any additional employment.	Staff is recommending, similar to Ms. Camp's suggestion, that arbitrators be required to make a disclosure only if they will entertain offers of employment while the arbitration is pending; no disclosure would be required if the arbitrator would not entertain such offers
State Bar Committee on Professional Responsibility and Conduct	10b	COPRAC questions whether the requirement to entertain offers of new employment or professional relationships would include membership in a professional arbitration organization such as the American Arbitration Association or JAMS. If so, the disclosure requirement would seemingly be triggered in nearly every arbitration.	This requirement is not intended to cover simple membership on a panel; it refers to offers of employment from a party or attorney, not general expressions of a willingness to serve as an arbitrator. We received many comments objecting to the consent

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		Standard 10c implies that in non-consumer arbitrations, an arbitrator who has disclosed the intent to entertain offers of future employment may then do so without further disclosure or informed consent. This may encourage parties in non-consumer arbitrations to disqualify an arbitrator based on a 10(b) disclosure. COPRAC questions whether it may be better to require informed consent of the parties before acceptance of any offers in all arbitrations.	requirement in subdivision 10(d), so staff is not recommending, as suggested by COPRAC, that this approach replace the disclosure requirement in 10(b).
Hon. David N. Eagleson	10b	The requirement that the neutral arbitrator indicate that he or she will or will not accept future employment as a neutral arbitrator, and ability to disqualify if the neutral discloses that he plans to accept other offers is not onerous.	No response required.
Sharon Lybeck Hartmann (Office of the Independent Administrator)	10b	Clarify whether failure to disclose whether additional offers will be entertained within ten days can be cured by a subsequent disclosure or absolutely bars the neutral from accepting subsequent employment under 10(c).	The standard provides that if this disclosure is not made at the outset of the arbitration, the arbitrator may not entertain such offers of employment.
Kenneth E. Owen	10b	The clause "while that arbitration is pending" should be moved to the end of the fourth full line (in the form attached to May 16 memorandum) to clarify that it defines the period in which the arbitrator must consider whether he or she will entertain offers of employment (rather than the period during which one identifies the lawyers associated with the lawyer in the arbitration).	Staff agree and are recommending this amendment.
Hon. Robert T. Altman	10d	It is not possible to cross-reference all of the lawyers and law firms associated with lawyers in the arbitration in order to give notice when one of them contacts for a prospective mediation. Standard 10 should be eliminated, particularly with respect to Kaiser arbitrations. It is also unnecessary and demeaning for former judges to request "permission" to take another case. A lawyer who wants the arbitrator to remain on the case is unlikely to risk the arbitrator's ire by denying permission, while a lawyer who wants the arbitrator off the case is going to deny permission hoping the arbitrator will recuse himself or herself rather than not make a living. Parties and lawyers [in a pending case] should not be permitted to deny the arbitrator permission [to accept additional cases] because the vast majority of cases set for arbitration are settled.	As suggested by this commentator, staff is recommending that standard 10(d) be eliminated. Staff is recommending that the remainder of standard 10 be retained.

Commentator	Section	Summary of Comment	Staff Response
		Standard 10 does absolutely nothing to insure a more "neutral neutral." Instead Standard 10 undermines the finality and certainty of arbitration awards, needlessly exposes arbitrators to liability and frightens away the most sought after arbitrators. Standard 10 undermines the finality and certainty of arbitration awards	
Hon. Eli Chernow	10d	Standard 10 will create administrative burdens that greatly outweigh the benefits. Standard 10 will result in limiting the pool of highly qualified arbitrators from which individuals in consumer arbitrations may choose. Standard 10 will create opportunities to challenge awards that will make the process far less useful and effective. Suggestion: Standards should make clear that the parties may, at the time of engagement, make informed waivers of the requirements of specific disclosure and consent to new engagement by the arbitrator. (Form attached to comment) The marketplace provides protections against a biased arbitrator.	As suggested by this commentator, staff is recommending that standard 10(d) be eliminated. Staff is recommending that the remainder of standard 10 be retained.
Hon. David N. Eagleson	10d	The standards are unquestionably inefficient and burdened with unnecessary expense and will not enhance or maybe even sustain the quality of the arbitration process and awards that flow therefrom. **T**he prohibition against an arbitrator accepting offers of subsequent employment without the informed consent of all parties and the provision requiring arbitrator in consumer cases to disclose unrejected offers and the parties' right to object (within 5 days and without provision for the arbitrator's absence vacation, illness, etc) are burdensome and will not uphold integrity of the arbitration process. Suggestion: Retain the requirement to disclose at the outset whether arbitrator will do additional Kaiser work. If a party or counsel objects, the arbitrator should be rejected at that time. Written consent or waiver to acceptance of additional cases should be allowed at the beginning of the engagement.	As suggested by this commentator, staff is recommending that standard 10(d) be eliminated, which should address this commentator's concerns.

Commentator	Section	Summary of Comment	Staff Response
		A current shortage of arbitrators with background in medical negligence work will be exacerbated if, in order to avoid the burdensome letter writing and expense above enumerated, an arbitrator only agrees to handle one case at a time.	
Sharon Lybeck Hartmann (Office of the Independent Administrator)	10d	10(b) and 10(d) may deprive parties of their jointly selected arbitrator (e.g. when a party to a pending case does not consent), and a number of attorneys have expressed indignation about this, believing that strangers to their action should not have the power to control their choice of arbitrator. Please provide guidance concerning whether the requirement of additional notice and consent under 10(d) can be waived if the arbitrator gives notice under 10(b) that s/he will entertain future offers of employment. (Many neutrals want to give the 10(b) notice and then seek written waiver of the 10(d) notice and objection procedure.)	Staff is recommending that standard 10(d) be eliminated. Staff is recommending that the remainder of standard 10 be retained.
C. David Serena	10d	Delay when the arbitrator must obtain consent to accept another case, will undercut the premise that arbitrations should be timely. Additional file checking, communication and limitation on future business will take time and cost money which will be passed along to the ultimate consumer. Parties right to privacy is breached merely by communicating to third parties the information that parties are involved in the arbitration. A professional arbitrator must be fair, or he/she is out of business (i.e. market will regulate conduct) Solution to most issues is to look at the proposed arbitrator's track record, which is available under the law, and find out if the arbitrator will continue to accept employment from either side during the pendency. If so, assume he/she will be getting more business from one side or the other, and make the decision at that point.	Staff is recommending that standard 10(d) be eliminated, which should address this commentator's concerns.

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Hon. Eric E. Younger (ADR Services)	10d	The commentator has at least one Kaiser case at least nominally on calendar about 60% of the time. Under the standards, if he is selected and learns nothing about the case, the lawyers have *de facto* control over his employment for the next several months, even if their case settles before the hearing and he is paid nothing. Lawyers may be uncomfortable putting on their case before a neutral whom they have forbidden to take another employment opportunity.	Staff is recommending that standard 10(d) be eliminated, which should address this commentator's concerns..
Sharon Lybeck Hartmann (Office of the Independent Administrator)	10d2	Require a party objection to be in writing.	Staff is recommending that standard 10(d) be eliminated so this change is unnecessary.
Kathryn Page Camp (National Futures Association)	11	Fully support	No response required.
Ruth V. Glick (California Dispute Resolution Council)	11	CDRC questions who will determine whether the arbitrator conducted the arbitration fairly or was swayed by partisan interests, and believes this is a general invitation for the losing party to sue. Suggestion: A party must show it was substantially prejudiced before it can invoke this Standard.	Such prejudice is already required by statute in order for an arbitration award to be vacated on the basis of arbitrator misconduct. Code of Civil Procedure section 1282.6 (a) (3) establishes as the ground for vacatur that "he rights of the party were substantially prejudiced by misconduct of a neutral arbitrator"
Suzanne Valente, Stephen Golub	11	Commentators write of their personal experience and grievances in an AAA arbitration of a fee dispute with their former attorney, who was also an AAA panel member. Ms. Valente expresses particular concern that the arbitrator did not allow discovery as provided for in the arbitration agreement, and that this prevented she and her husband from proving their case.	No response required.
Kathryn Page Camp (National Futures Association)	12	Fully support	No response required.
Kathryn Page Camp (National Futures	13	Fully support	No response required.

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Association)			
Kathryn Page Camp (National Futures Association)	14a	Fully support	No response required.
Gail Hillebrand (Consumers Union) **(4-04-02)**	15	Standard 15, concerning marketing, is another important element of the standards.	No response required.
Cliff Palefsky McGuinn, Hillsman & Palefsky	15	"The rules are a wonderful piece of work that will dramatically enhance the credibility and viability of arbitration in California." A rule should be adopted which protects the integrity of the process by prohibiting arbitrators from soliciting cases (like the Ethical Rules for Arbitrators in Commercial Disputes.) As currently drafted, the rules only refer to solicitation during the pendency of a case, which leaves the unfortunate impression that solicitation cases at other times would be acceptable.	Staff is recommending the addition of a provision prohibiting arbitrators from soliciting appointment in a particular case.
Kathryn Page Camp (National Futures Association)	15	Standard should be clarified to indicate that it is permissible to market a program as a "customer-friendly forum" (e.g. choice between member or non-member panel; statistics showing customers win 60% of time and recover 60% of their claim when they win).	The standards prohibit arbitrators from making any representations that imply favoritism or a specific outcome. Information about choices of panels would not seem to imply favoritism or a specific outcome. Whether outcome statistics **prohibits them from making any representations that imply favoritism or a specific outcome** tics create such implications may depend on the tone and tenure of their use in particular marketing materials.